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No. 678

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

UNITED LEATHER WORKERS INTERNATIONAL UNION et al.,
Petitioners,

vs.

HERKERT & MEISEL TRUNK COMPANY, a Corporation, et al.,
Respondents.

No. ——

PETITION FOR WRIT OF CERTIORARI.

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JOHN P. LEAHY,
Solicitor for Petitioners.

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NOTICE TO RESPONDENTS.

To the Above Named Respondents or Their Solicitors and Counsel:

Take notice, that at the opening of the Supreme Court of the United States, on Monday, March 26th, 1923 (or as soon thereafter as counsel can obtain a hearing in that behalf), a petition for a writ of certiorari in the suit of United Leather Workers International Union et al. (appellants), petitioners v.

Herkert & Meisel Trunk Company et al. (appellees), respondents, lately pending in the United States Circuit Court of Appeals for the Eighth Circuit, as No. 5965 therein, will be submitted to the Supreme Court of the United States on behalf of the said petitioners (appellants therein), and a copy of said petition is hereby served upon you.

JOHN P. LEAHY,
Solicitors for Petitioners.

Service of the above notice and copy of petition duly accepted this 20th day of February, 1923.

CHARLES A. HOUTS,
MAT J. HOLLAND,
Solicitors and Counsel for Respondents.

IN THE

SUPREME COURT OF THE UNITED STATES.

.....TERM, 1922.

United Leather Workers International Union, Local Lodge or Union No. 66; A. M. Reuter, Al Berkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Walter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Benjamin Schnitz, Theo Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolph Koob, Anton Pauley, Leo Pauley, Robert Worsing, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger and George Wenk,

vs. Petitioners,

Herkert & Meisel Trunk Company, a corporation, P. C. Murphy Trunk Company, a corporation, James A. Quirk Trunk Company, a corporation, Stability Leather Goods Manufacturing Company, a corporation, and H. A. Kolb Trunk and Case Company, a corporation, Respondents.

No.....

PETITION FOR WRIT OF CERTIORARI.

Now comes the above-named petitioners and respectfully represent to this Honorable Court as follows, to wit:

That all the defendants named in the plaintiffs' bill of complaint, except Edward Schilling, Henry Schnitz and Robert Worsing, who were not served and did not appear in the said cause and were not included within the scope of the injunction issued by the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, and Al Berkenmeier, one of the petitioners herein, were employes of the various complainants and also members of the Local Union hereinbefore mentioned.

That these defendants, with the exceptions above mentioned, had been working under contracts made by them as members of the Local Union with the appellees, which expired in April, 1921; that negotiations for renewal of the contracts were entered into by your petitioners through representatives of their said union with the herein-named respondents, which resulted in a failure to arrive at an understanding and in the withdrawal of your petitioners from the employment of the respondents and the calling of a strike by your said petitioners as members of the aforesaid union, which said strike was called in the regular way and in accordance with the rules and regulations of the said Local Union, of which your petitioners were members.

That the bill of complaint filed by the respondents in the said United States District Court for the East-

ern Division of the Eastern Judicial District of Missouri averred that the respondents (complainants in the bill) were corporations organized and existing under the laws of the State of Missouri, having their principal offices and places of business in the City of St. Louis and State of Missouri, and that the defendant United Leather Workers International Union, Local Lodge or Union No. 66, is a voluntary and unincorporated association composed of numerous persons, **all of whom resided in the City of St. Louis and State of Missouri.**

The said bill of complaint further averred that each of the complainant corporations has large numbers of customers in the various states and territories of the United States to which they had been shipping and would continue to ship in interstate commerce trunks, leather goods and other products of their factories; that they had accepted orders to ship manufactured goods to customers outside the state who would cancel their orders unless same were promptly shipped.

The complainants' said bill further averred that the defendants (petitioners herein), well knowing the facts above stated, determined that each of the complainants should enter into a contract with the local union, by which each of them would unionize its business and adopt what was commonly called the

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"closed-shop" policy, and would not permit any persons to work in their factories who were not members in good standing of the said local union.

The complainants' bill further averred that on the 10th day of April, 1920, the defendants, your petitioners, entered into a conspiracy with each other and with various other persons to destroy the complainants' business and to compel their employes, present and future, to leave said employment; that in furtherance of the said conspiracy, the defendants, your petitioners, inaugurated a strike against the complainants and by the use of abusive language and boisterous conduct intimidated their employes and prevented the complainants from carrying on their said interstate commerce business and interfered with and obstructed said complainants in the manufacture and shipment of the products of their various factories sold to be shipped in interstate commerce, all with the purpose of forcing the complainants to yield to the demands of the defendants.

The complainants' said bill further averred that **they represented the entire business of manufacturing trunks and leather bags in the City of St. Louis,** and that this result had been obtained by great labor and effort on the part of complainants and at great expense, and that it was absolutely impossible for the complainants to carry on their said business if

they were hindered by the "closed-shop" policy for the reason that their output would be restricted if subject to unreasonable union domination, and it would be absolutely destructive of the business of the complainants. The prayer of the bill was for an injunction, temporary and permanent.

That the answer filed by the defendants, your petitioners herein, denied specifically the allegations of the petition and further averred that the complainants in the bill of complaint, as stated in same, were corporations of the State of Missouri and that all of the defendants were residents of the said state and that, therefore, the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri had acquired no jurisdiction whatever over their persons, had no lawful power to proceed with the trial thereof or to issue an injunction against them, or to grant the equitable relief sought by these complainants, and the said answer prayed for the dissolution of the restraining order theretofore granted by the said District Judge, the denial of the temporary injunction and the dismissal of the complainants' bill (pages 32-36, inclusive, printed record).

That a hearing of the said cause was had before Honorable C. B. Faris, Judge of the United States District Court of the Eastern Division of the Eastern Judicial District of Missouri, and the said Judge in his opinion, as set forth in Appendix "A," found

that the strike was called after a fruitless effort to agree upon terms, pursuant to a vote taken in the regular way; that the calling of the strike was followed by the quitting of the complainants' employment of practically all their employes; that picketing was maintained around their plants and various illegal acts were committed; **that these unlawful acts prevented the plaintiffs from employing other workers to take the place of the strikers, so that the plaintiffs were unable to manufacture the goods necessary to fill their interstate commerce orders; that there was no actual interference with or hindrance of any interstate movement or shipment of the goods made by the plaintiffs or by either of them, for the very simple reason that the goods had never come into existence, on account of the interference mentioned; that such goods as were actually made by plaintiffs were shipped in interstate commerce (when such was their destination) without let or hindrance** (Printed Rec., p. 47).

That the Court found from the acts of the pickets existence of a conspiracy amongst the defendants, but did not find that there was any conspiracy for the purpose of unionizing the complainants' shops, as set forth in the bill of complaint.

That the said District Judge was of the opinion, as expressed by him in his decision, that upon the pleadings and facts in the evidence and particularly

because the goods of the plaintiffs had not come into existence as manufactured products and were not shipped, and that there **had been no interference with the shipment of such goods as were manufactured, that there was no violation of the interstate commerce laws**, and, therefore, he **did not have jurisdiction over the defendants,** but felt himself constrained to hold the opposite view in deference to the opinion of the United States Circuit Court of Appeals for the Eighth Judicial Circuit in the case of Dowd v. United Mine Workers et al., Circuit Court of Appeals Records, p. 495 (Printed Rec., p. 50; Orig. Rec., p. 71).

The hearing upon which the foregoing opinion was rendered by the District Judge was on the plaintiffs' application for a temporary injunction, and, thereafter, both sides having agreed to submit the cause upon the evidence adduced at this hearing, the District Court granted a permanent injunction against the defendants herein named, from which decree and judgment your petitioners (defendants) appealed to the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

Your petitioners further state that there was no proof offered by the complainants in the entire record of this cause that the defendants or either of them had interfered in any way with any of the complainants' imports or shipments in interstate commerce, but such proof of alleged illegal acts was confined to

interference with the employes of the complainants at their factories; that there was no proof whatever in the said entire record of any intent upon the part of the defendants to bring about the "closed-shop" policy charged in the bill of complaint.

That, as hereinbefore stated, your petitioners (defendants) appealed to the United States Circuit Court of Appeals for the Eighth Judicial Circuit, and the said cause was argued and submitted to the latter court before Honorable Walter H. Sanborn, Circuit Judge of the United States Circuit Court of Appeals for the Eighth Judicial Circuit, Honorable Kimbrough Stone, Circuit Judge, Honorable Thomas C. Munger, District Judge, and on the 21st day of October, 1922, Circuit Judge Walter H. Sanborn, speaking for the said Judge Munger, being a majority of the said court, affirmed the judgment of the Trial Court granting a permanent injunction against these defendants. A copy of the opinion of the majority of the said United States Circuit Court of Appeals for the Eighth Judicial Circuit is hereto attached and marked "Appendix B."

That a **dissenting** opinion in this cause was filed by the Honorable Kimbrough H. Stone, Judge of the United States Circuit Court of Appeals for the Eighth Judicial Circuit, a copy of which is hereto attached, marked "Appendix C," and made part hereof.

That on the 12th day of December, 1922, your petitioners filed their petition for a rehearing of the said cause in the United States Circuit Court of Appeals for the Eighth Judicial Circuit, a copy of which is hereto attached, marked "Appendix D," and made part hereof, and on the 25th day of December, 1922, the petition of these petitioners for a rehearing of the said cause was overruled by the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

A certified copy of the entire record of the said cause in the District Court and in the United States Circuit Court of Appeals is herewith submitted as a part of this application in conformity with the rule of this Honorable Court concerning cases sought to be brought from the Circuit Court of Appeals.

Reasons Why Writ Should Be Granted.

While the record in this case will show that the strike was justifiable from every standpoint, morally and legally, and (as we contend) conducted with a due regard for peace and order and the rights of the complainants, the acts for which it was sought to hold them responsible being—except in one or two instances—committed by persons not shown to be connected in any way with the defendants.

Yet, as the question of paramount importance in this case is that of the **jurisdiction of the federal**

court over the defendants, and as your petitioners feel and believe that on the facts and the law of the case, the federal courts were not entitled to exercise jurisdiction over them, and from that standpoint, the petitioners are entitled to the writ herein prayed for, we may, therefore, very appropriately, and as briefly as possible and compatibly with its importance, confine ourselves to a discussion of this question.

Jurisdiction of the Court.

In this connection, we take leave to point out that there is no diversity of citizenship in this case, and that jurisdiction over the defendants is claimed solely because of an alleged violation of the Sherman Anti-Trust Act of July 2nd, 1890, Chapter 647, Section I, 26 Stat. (Compiled Statutes, Section 8820) which is as follows:

> "Every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce amongst these several states or with foreign nations is declared to be illegal."

To bring any case therefore, wherein a violation of this act is alleged, it is essential that a combination in restraint of interstate commerce must be averred and established and its execution proved by overt

acts, before the courts of the state, in which ample remedies are provided for the violation of the rights of its citizens, can be deprived of jurisdiction, and such jurisdiction exercised solely by the federal courts.

No Proof of Intent or Conspiracy to Directly Interfere With Interstate Commerce.

A discussion of the evidence is neither appropriate nor necessary in this petition, more particularly since in the findings of the trial Judge contained in his opinion in Appendix A, as well as in the majority opinion of the United States Circuit Court of Appeals for the Eighth Judicial Circuit, and even more expressly in the dissenting opinion of Judge Stone of the latter court, it is affirmed and declared that no conspiracy on the part of these petitioners (defendants), having for its purpose an unlawful interference with the complainants' interstate commerce, was proven against them. The following excerpt from the opinion of Judge Stone (see Appendix C; also United Leather Workers International Union v. Herkert & Meisel Trunk Company et al., Fed. Rep. 284, l. c. 463) will indicate this:

> "The record is entirely barren **even of a suggestion that there existed any actual intent to affect interstate commerce.** The sole purpose of this strike was to benefit and strengthen the labor unions here involved by unionizing these partic-

ular plants. Of course, this was to be accomplished by curtailing, and, if possible, preventing complainants from manufacturing their products. **But there was no specific purpose or intent to affect interstate commerce,** such as was alleged, for example, in the United Mine Workers' case, supra. Nor is there a word of testimony tending to show that the respondents had any knowledge of or cared anything about whether the business of complainants was state or interstate in character. That consideration was unimportant to their purposes. Therefore, if an intent to interfere with interstate commerce is to be found **it must be imputed as a matter of law, not fact, from the circumstances, that to prevent this manufacture would naturally and inevitably prevent the products thereof going into interstate commerce.''**

Majority Opinion of Circuit Court of Appeals Holds That Intent May Be Implied as Matter of Law.

In holding that such an intent could be implied in this case, Judge Sanborn, speaking for the majority opinion of the United States Circuit Court of Appeals for the Eighth Judicial Circuit in this case, says:

> ''It was not essential to the right of the plaintiffs to relief by injunction by the court below, that the object or effect of the defendants' conspiracy and its execution should obstruct all interstate commerce in that class of articles with

> which the plaintiffs were conducting interstate commerce. It was sufficient that the defendants' conspiracy was with the **necessarily inferred intent** and that, as unlawfully executed by them, **it had the effect** directly and substantially to interfere with, restrain and obstruct the large volume of interstate commerce, which the plaintiffs were conducting to their irreparable injury."

This ruling of the majority of the United States Circuit Court of Appeals for the Eighth Judicial Circuit, as we respectfully submit to this Court, ignores the burden cast upon the respondents (complainants) to establish a prima facie case against the defendants substitutes conjecture for requisite evidential facts, carries interstate authority into the dominion of pure state control to such an extent that hardly a vestige of such state control remains and the disastrous consequences which would follow from its adoption as a settled principle of law is pointed out with the most vigorous and striking emphasis by Circuit Judge Stone in his dissenting opinion, which we again quote (see Appendix C, also United Leather Workers International Union v. Herkert & Meisel Trunk Company et al., Fed. Rep. 284, l. c. 464):

> "It is generally true that men who do acts are presumed to intend the natural consequences thereof. But here, again, this logic and rule must be applied in a practical way. If it is not so

applied, the **entire police powers of the states is in danger of absorption by the national government.** This is true because, in our complex social and economic life, production, as well as manufacture, of all kind of things is generally followed by entrance of those articles, or some of them, into interstate commerce. This necessity for having always in mind constitutional limitations in applying such rules of logic and law has been repeatedly recognized and laid down by the Supreme Court. The applied rule is that state laws or individual acts which affect interstate commerce incidentally are to be **distinguished from those which affect it directly.** The former are without, the latter are within, national control." (Citing United Mine Workers v. Coronado Coal Co., supra; U. S. v. Patten, 226 U. S. 525, Sup. Ct. 141, 57 L. Ed. 333, 44 L. R. A. [n. s.] 325; Ware & Leland v. Mobile County, 209 U. S. 405, 28 Sup. Ct. 526, 52 L. Ed. 855, 14 Ann. Cas. 1031; Hooper v. California, 155 U. S. 648, 15 Sup. Ct. 207, 39 L. Ed. 297; Leloup v. Mobile, 127 U. S. 640, 8 Sup. Ct. 1380, 32 L. Ed. 311, and many other cases.)

Case of United Mine Workers of America v. Coronado Coal Company, 42 Supreme Court Reporter, l. c. 583.

It does not appear to us that the words in the page referred to in the above-entitled cause,

"unless the obstruction to mining is intended to restrain interstate commerce in it, or has neces-

> sarily such a direct, material or substantial effect to restrain it, that the intent may be reasonably inferred,"

were meant to constitute such a qualification to the declaration that proceeds it, namely:

> "That coal mining is not interstate commerce, and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce,"

as to leave a gap or loophole which would make the declaration that coal mining is not interstate commerce nor its obstruction a restraint of that commerce, meaningless and practically obliterate the distinction between state and interstate control.

If we interpret that portion of the Coronado decision correctly, it means that there must be either some direct proof in the case that the defendants had in mind, or the circumstances indicated that they had in mind the intention to obstruct or to restrain the interstate shipment of the coal or that the conspiracy and its execution was so wide and comprehensive as to amount to a practical stoppage of trade and commerce in the coal itself.

There was, we respectfully submit, none of these elements present in the instant case. It was, as said in the United Mine Workers case, supra, by this Court

in the above case has been affirmed by an unbroken line of decisions since that time. See cases of Kidd v. Pearson, 128 U. S. I, 20, 21; United States v. Knight, 156 U. S. Rep., l. c. 131; Texas & New Orleans Ry. Co. v. Sabine Transit Co., 227 U. S., l. c. 111; Southern Pacific Terminal Co. v. Interstate Commerce, 219 U. S., l. c. 498; Bacon v. Illinois, 227 U. S. Rep., l. c. 515, 516; Arkadelphia Milling Company v. St. Louis & Southwestern Ry. Co., 249 U. S., l. c. 151; Delaware, Lackawanna and Western R. R. Co. v. Yurkonis, 238 U. S., l. c. 449; Heisler v. Thomas Colliery Co. et al., 43 United States Supreme Court Reporter, loc. cit. 86.

In the latter case, decided November 27th, 1922, Mr. Justice McKenna, speaking for this Court in affirming the doctrine of the case of Coe v. Errol, pointed out with a most direct and convincing emphasis the result that would follow from placing the products of the state destined for market in other states within the category of interstate commerce, as follows:

> "The reach and consequences of the contention repels its acceptance. If the possibility, or, indeed, certainty of exportation of a product or article from a state determines it to be interstate commerce before the commencement of its movement from the state, it would seem to follow that it is in such commerce from the instant of its

growth or production, and in the case of coals, as they lie in the ground, the result would be curious. It would nationalize all industries; it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats; the cotton of the South; the shoes of Massachusetts, and the woolen industries of other states at the very inception of their production or growth; that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to states other than those of their production." (See page 6 of opinion, also 43 U. S. Rep., l. c. 86.)

This doctrine is also affirmed in the case of United Mine Workers of America v. Coronado Coal Company, supra.

The majority opinion of the United States Circuit Court of Appeals in the instant case, while admitting that manufacture alone is not interstate commerce, yet by a process of reasoning, ingenious and elaborate, but, we respectfully submit, unsound, attempts to bring the manufacture of articles intended for interstate shipment within the category of interstate commerce by characterizing it as an essential part of an indispensable step in the execution of inter-

state commerce control or in the continuously flowing currents of interstate commerce.

Leaving aside the question that in the very nature of things the intention of the manufacturer to make and ship any article in his factory does not stamp it with the character of finality since it may be sent somewhere else or sold within the state if the manufacturer change his mind or his customer may refuse to receive it because of defects or for other reasons, the above proposition is, we respectfully submit to this Court, most successfully met and refuted in the dissenting opinion of Judge Stone in this case (see Appendix "C", also United Leather Workers' International Union v. Herkert & Meisel Trunk Company et al., 284 Fed. Rep., page 459), as follows:

> "As to the contention that because an article is contracted for, intended for, or normally enters into interstate commerce, the manufacture of it is a part of interstate commerce. This conclusion is based upon the argument that if the manufacture is prevented, the article cannot enter interstate commerce, and, therefore, manufacture is an 'intermediate step' in and an integral part of such commerce. **This is patently true as a result of logical reasoning, but is it true when the problem before the court is to define that somewhat difficult line which separates the powers of the nation over interstate commerce from the powers of the states over**

intrastate commerce and internal police regulation?''

''Such a problem must be solved along **'practical' as well as logical lines.** As said in Diamond Glue Company v. United States Glue Company, 187 U. S. 611, at page 616:

'' 'In modern societies every part is related so organically to every other that what affects any portion must be felt more or less by all the rest. Therefore, unless everything is to be forbidden and legislation is to come to a stop, it is not enough to show that, in the working of a statute, there is some tendency, logically discernible, to interfere with commerce or existing contracts. Practical lines have to be drawn and distinctions of degree must be made.' (See, further, Kidd v. Pearson, 128 U. S. 1, 21; Coe v. Errol, 116 U. S. 517, 525, 527; Tredway v. Riley, 32 Nebraska 495.)

''If this were otherwise, as said in Hammer v. Dagenhart, 247 U. S. 251, at page 272, 38 Sup. Ct. 529, at page 531,

> 'all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the states (Kidd v. Pearson, 128 U. S. 1, 21).' ''

(See Appendix ''C'', dissenting opinion of Judge Stone, 284 Fed. Rep., l. c. 459.)

Decision in Conflict With Those of This Court.

The decision of the United States Circuit Court of Appeals for the Eighth Judicial Circuit in this case is in direct conflict with the case of Coe v. Errol, 116 U. S. 517; Hammer v. Dagenhart, 247 U. S. 251; United Mine Workers of America v. Coronado Coal case, supra; Heisler v. Thomas Colliery Company case, and in point of fact all the cases decided by this Court were, wherein this question was determined.

Danville Local Union No. 115 v. Danville Brick Company Case, 283 Fed. Rep., l. c. 910.

The majority decision of this Court is in conflict with the decision of the United States Circuit Court of Appeals for the Seventh Judicial Circuit in the above case, where under practically similar facts, it was held that interference with a manufacture of brick by a company which in the ordinary course of business shipped it outside of the state, was not an interference with interstate commerce, **even though complainant had at the time in effect a particular contract to furnish brick outside of the state, which it was prevented from fulfilling through the defendants' interference with the operation of its plant.**

Gable v. Vonnegut Machinery Company, 274 Fed. 66.

The decision of the United States Circuit Court of Appeals for the Eighth Judicial Circuit in this case is also in conflict with the decision rendered in the above case by the United States Circuit Court of Appeals for the Sixth Judicial Circuit, in which the facts are so analogous to those of the instant case as to fit it like a glove, and wherein it is said, at page 73:

> "But all these statements combined fall short of alleging interference with interstate commerce under either the Sherman or Clayton Acts. Neither of these statutes furnishes a remedy against acts merely because they incidentally and indirectly affect interstate commerce; they apply only to acts which directly and immediately relate thereto. Manufacturing is not commerce. **None of the cases cited support the theory that a manufacturer may invoke the jurisdiction of the Federal Court merely because a strike interferes with the manufacture of his products, which are sold generally in interstate commerce.**"

It seems to us, in conclusion, that the same rule of law which applies to articles in process of manufacture or before their shipment into another state—though destined for such shipment—should also apply to interference with the manufacture of the goods in the absence of a conspiracy to directly obstruct the

said shipment and the disposition of goods in an outside state, since both propositions are based upon practically the same principle, whether it concerned the right of the taxing authorities of the state to impose taxes upon the articles or of the courts of the state to prevent an unlawful interference with their production.

Both in the brief and oral argument in the United States Court of Appeals, we sought to impress this view upon the Bench of that court, because of our conviction that it was vitally essential to the preservation of the distinction between interstate and state commerce that this rule should be applied in the taxation of products within the state or interference with their production, and we respectfully submit that a point of time when goods or interference with their production should cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation should be so definitely settled as to leave no room for doubt in its application, and that point, we submit, is, as stated in Coe v. Errol and Hammer v. Dagenhart, supra, when they commence their final movement for transportation from the state of their origin to that of their destination, at which stage alone, interference can be said to violate the interstate commerce laws.

The adoption of any other rule will, we respectfully submit, lead to a bewildering confusion in which it will be practically impossible to define or limit the boundaries of national control and to preserve to the states the powers which the Constitution gives them, and to distinguish intelligently the question of jurisdiction as between the federal and state courts.

We, therefore, submit, that the respondents in this case were not entitled to a decree of injunction against your petitioners (the defendants); that the decision of the United States Circuit Court of Appeals for the Eighth Judicial Circuit affirming the judgment of the District Court and granting said decree of injunction against your petitioner is erroneous because opposed to the law and the evidence, and because it is an attempt to exercise a jurisdiction over your petitioners, which properly, legally and exclusively belongs to the courts of the State of Missouri; that it is erroneous because opposed to the prior decisions of this Court, as hereinbefore mentioned, and which in the language of Judge Stone in his dissenting opinion it has refused to follow (see United Leather Workers' International Union v. Herkert & Meisel Trunk Company et al., 284 Fed. Rep., l. c. 459), and that in view of the importance of the decision of the United States Circuit Court of Appeals in this case, of its conflict with decisions of this Court and

of the other circuits mentioned, that the defendants should be granted this writ, or, in the alternative, that their appeal should be heard and the decision of the United States Circuit Court of Appeals for the Eighth Judicial District should be reversed.

Respectfully submitted,

JOHN P. LEAHY,
Solicitor for Petitioners.

State of Missouri, } ss.
City of St. Louis. }

John P. Leahy, of lawful age, having first been duly sworn, deposes and says on his oath that he is solicitor for said petitioners; that he has read the foregoing petition, and is acquainted with its terms; that the facts therein stated are true except as to those averments therein made upon information or as matters of opinion, and those affiant verily believes to be true; and that the said application and petition are not made or presented for the purpose of delay, but in good faith and in the sincere belief, under advice of counsel, that the same are well founded in law and equity.

John P. Leahy.

Sworn to and subscribed by the above-named affiant at said City of St. Louis, before me, the undersigned, this 15th day of February, A. D. 1923.

Harriet Cox,
Notary Public within and for the
(Seal) City of St. Louis, Missouri.

My term expires February 22, 1926.

Certificate of Counsel.

I, the undersigned, counsel for said petitioners, hereby certify that I have examined the foregoing petition and am acquainted with its contents, and that in my opinion the same is well grounded in point of law and equity, and that the said application is not made for delay, but in good faith, and because counsel believe the same is based on meritorious and substantial grounds.

John P. Leahy,
Counsel for Petitioners.

APPENDIX A.

Opinion of the District Court on the Granting of the Permanent Injunction.

Plaintiffs, and each of them, are engaged in the manufacture of trunks, valises, hand-bags and similar articles, which they sell on orders in the State of Missouri, and in divers other states of the Union. Some of the plaintiffs sell in foreign countries a part of their output. By far the larger proportion of plaintiffs' business consists in sales, on orders for their products, in other states than the State of Missouri.

Prior to, and at the time of, the issuance of the temporary restraining order herein, each of the plaintiffs had on file many unfilled orders from states other than the State of Missouri, for goods, which goods, when manufactured, were to be shipped in interstate commerce. A strike was called by the defendants, which are Local Labor Unions, or officers and members of such Unions, pursuant to a vote taken by the Unions and in the regular way under the rules and by-laws of the Unions. This strike was called after a fruitless effort to agree upon wages and upon a contract embracing the terms and conditions of future employment, which seems to have had therein the phase of collective bargaining.

Upon the calling of the strike, which followed immediately after the failure to agree on a new contract, practically all of the employees of the plaintiffs quit plaintiffs' employment. Thereafter, and until the temporary restraining order was issued herein,

the several shops of plaintiffs were picketed by striking employees; in many cases there were from three to twenty, or more, pickets employed around and about the shops of plaintiffs, or some of them. During this picketing many unlawful and unpeaceful acts were committed by the pickets, such as calling the various potential employees, and divers employees who continued in the employment of plaintiffs, vile and opprobrious names; there were instances of domiciliary visits accompanied by threats, and various other things of a like nature too numerous to mention.

These unlawful acts prevented plaintiffs from employing other workmen to take the places of the strikers; so that plaintiffs were unable to manufacture the goods necessary to fill both the interstate and intrastate orders which they had on hand. Many of the goods, in fact the larger proportion thereof, which plaintiffs would have made, but were in the mode above mentioned prevented from making, would have been shipped when manufactured, to other states, to fill what is called in the record "interstate orders". There was no actual interference with, or hindrance of any interstate movement, or shipment of any goods made by plaintiffs, or by either of them, for the very simple reason that the goods designed for interstate shipment have never come into existence on account of the interference mentioned. For, as forecast, these goods could not be manufactured because the plaintiffs' former workmen struck and quit, and other workmen could not be obtained to manufacture them; these potential workmen being kept away by a too numerous picketing and by

threats and intimidation. Such goods as were actually made by plaintiffs have been shipped in interstate commerce (when such was their destination) without let or hindrance. The methods used by defendants in preventing plaintiffs from obtaining other workmen have been, as stated, in numerous proven instances, unpeaceful and unlawful.

Barring the question of jurisdiction, and the existence of a conspiracy, plaintiffs are unquestionably entitled to the relief by injunction for which they prayed. Indeed, counsel for defendants seemingly concede this is a tacit way, because the burden of counsel's contention is bottomed solely upon the alleged phases of jurisdiction and absence of a conspiracy. There is no diversity of citizenship involved in the case. If this Court has jurisdiction at all, it gets it solely perforce the provisions of Section 1 of the so-called Sherman Anti-Trust Act (26 Stat. 209).

Upon this point it is urged that, since the goods of plaintiffs which they intended to ship in interstate commerce when they came into existence were not in existence at the time defendants unlawfully interfered with plaintiffs' business, the case does not fall either within the purview or protection of the Sherman Anti-Trust Act, supra, and, therefore, this Court has no jurisdiction. Confessedly the point urged is, at least on principle, a close and difficult one. So much of the language of the Sherman Anti-Trust Act, supra, as seems pertinent to this question reads thus:

> "Every contract, combination, in the form [—] a trust or otherwise, or conspiracy in restraint of trade or commerce among other states,

> or with foreign nations, is hereby declared to be illegal." (Sec. 1, Act of July 2, 1890, Chap. 647, 26 Stat. 209.)

Pursuant to the provisions of Section 4 of the Sherman Anti-Trust Act, supra, jurisdiction to enforce compliance with the provisions of the Act by injunction is conferred upon the Federal District Courts, sitting as courts of equity. When we read Sections 1 and 4 together, and convert the definition of Section 1 into plain and concise language, it is simply provided, that every conspiracy in restraint of interstate commerce may be enjoined in a federal court; subject, of course, in a labor dispute to the qualifications set out in the Clayton Act. It is strenuously contended by learned counsel for defendants that when Congress referred, in the Sherman Anti-Trust Act, to the restraints of interstate commerce, it held in mind the usual and ordinary definition of such commerce; and that the questions of when such commerce begins, and when it ends, are referable to the well known definitions of this commerce which have long been well settled in the federal courts.

Illustrating this view, and this contention, it was held in the fairly early case of In re Green, 52 Fed., l. c. 113, in an opinion rendered by Judge (afterwards Mr. Justice) Jackson, that

> "when the (interstate) commerce begins is determined not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but the actual delivery of it to a common carrier for transportation, or

the actual commencement of its transfer to another state * * * Neither the production or manufacture of articles or commodities which constitute subjects of commerce, and which are intended for trade and traffic with citizens of other states, nor the preparation for their transportation from the state where produced or manufactured prior to the commencement of the actual transfer or transportation thereof to another state, constitutes that interstate commerce which comes within the regulating power of Congress."

This definition of interstate commerce with reference to when it begins, learned counsel for defendants urge, has been very lately affirmed and followed by the Supreme Court of the United States in the case of Hammer v. Degenhart, 247 U. S., l. c. 272, where it was said:

"Over interstate transportation or its incidents the regulatory power of Congress is ample, but the production of articles intended for interstate commerce is a matter of local regulation.

"'When the commerce begins is determined not by the character of the commodity, or by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation or the actual commencement of its transfer to another state (Mr. Justice Jackson in re Green, 52 Fed. 113).'

"This principle has been recognized often in this court (Coe v. Errol, 116 U. S. 517; Bacon v. Illinois, 227 U. S. 504, and cases cited). If it were otherwise all manufacture intended for interstate shipment would be brought under federal

> control, to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the constitution when they vested in Congress authority to regulate commerce among the states (Kidd v. Pearson, 128 U. S. 1)."

The above well-known and well-settled definition, touching when articles made in one state and intended for sale in another begin their travels towards such other state, so as to bring them within the constitutional power of Congress to regulate interstate commerce, ordinarily would be regarded as conclusive upon the courts in construing the language used in the first section of the Sherman Anti-Trust law. **If the matter were one of first impression, in this circuit, I would feel constrained to agree with counsel for defendants, and to hold that the above well-settled definition touching when interstate commerce begins ought to be applied to that term as used in the Sherman Anti-Trust Act, supra.** But the matter is not one of first impression in this circuit. Therefore, **it is my duty, regardless of any personal views or convictions which I may hold** upon the subject, to defer to and follow what I am forced to consider the view taken by the Court of Appeals of the Eighth Circuit.

In the case of Dowd v. United Mine Workers of America et al., 148 C. C. A., 495, local citation 51, it was said by the Circuit Court of Appeals of this Circuit, that:

> "Some of the coal companies were not actually engaged in interstate commerce at the time the alleged acts were committed by the defendants;

but they were preparing to do so; and were prevented from so doing, as they allege, by the wrongs of the defendants. It was held in Pennsylvania Sugar Refining Co. v. American Sugar Refining Co. et al., by the Circuit Court of Appeals for the Second Circuit, 166 Fed. 254, 92 C. C. A., 318, that:

"A conspiracy to prevent a manufacturer who procures his supplies and disposes of his products by means of interstate commerce from engaging in business at all necessarily places restrains upon such commerce. Its flow is restricted and interrupted. The importation and exportation of articles of commerce are directly prevented, and none the less so because the conspiracy may be of so wide a scope as to interfere with interstate commerce also."

To the same effect in Thompson et al. v. Union Castle Mail Steamship Co. et al., 166 Fed. 251, 92 C. C. A., 315 (2nd Circuit).

It is next objected that the alleged wrongs of the defendants do not constitute an interference with interstate trade or commerce. We do not think, since the case of Loewe v. Lawlor, 208 U. S. 374, 28 Sup. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815, and Lawlor v. Loewe, 235 U. S. 5, 522, 35 Sup. Ct. 170, 59 L. Ed. 341, it can be said that this can be considered an open question. In rendering the opinion of the Supreme Court when the case was last before it, Justice Holmes said:

"The substance of the charge is that the plaintiffs were hat manufacturers who employed non-union labor; that the defendants were members of the United Hatters of North America, and also

> of the American Federation of Labor; that in pursuance of a general scheme to unionize the labor employed by the manufacturers of fur hats (a purpose previously made effective against all but a few manufacturers) the defendants and other members of the United Hatters caused the American Federation of Labor to declare a boycott against the plaintiffs, and against all hats sold by the plaintiffs to dealers in other states and against dealers who shall deal in them; and that they carried out their plan with such success that they have restrained or destroyed the plaintiffs' commerce with other states."

This charge being proven, the learned Justice further said (235 U. S. 534, 35 Sup. Ct. 172, 59 L. Ed. 341):

> "We agree with the Circuit Court of Appeals that a combination and conspiracy forbidden by the statute were proved and that the question is narrowed to the responsibility of the defendants for what was done by the sanction and procurement of the societies above named."

Again, touching the far-reaching power of Section 1 of the Sherman Anti-Trust Act, supra, it was said by the Supreme Court of the United States in Eastern States Lumber Association v. United States, 234 U. S. 600, that that section broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce.

After the decision of the Circuit Court of Appeals of the Eighth Circuit, in the case of Dowd v. United Mine Workers etc., supra, the latter case, under the

style of United Mine Workers of America v. Coronado Coal Co., was again before the Circuit Court of Appeals of this Circuit (258 Fed. 829). The question of jurisdiction was again raised and, seemingly, strenuously urged. The Court refused to re-examine the question of jurisdiction, bottomed there, as here, upon the construction of the provisions of the first section of the Sherman Anti-Trust Act, but contented itself with saying upon this point:

> "The learned counsel for defendants neither in their voluminous brief (326 printed pages) nor in their oral argument questioned these statements of facts, nor did they seriously attack the sufficiency of the evidence, but they insist that they do not establish that the plaintiffs were engaged in interstate commerce, and therefore these acts were not in violation of the Sherman Act. The leading case relied on is United States v. Knight, 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325, but this case, if not expressly overruled, has been much weakened by the later decisions of the Supreme Court, and it was so held by this court when this case was here before, 235 Fed. 1, 8, 148 C. C. A. 495. As this court, when this case was here before, held that the alleged wrongs and torts of the defendants charged in the complaint, and which at the trial were established by substantial evidence, constituted an interference with interstate commerce, and violated the Sherman Act, that opinion is the law of the case, and cannot be again re-examined."

I need not go into the somewhat complicated facts before the court in the Dowd case, supra. It will suffice to say that if the Coal Companies, which were

the plaintiffs therein, were, upon the facts, engaged in interstate commerce, then the plaintiffs here are also, upon the facts, engaged, and were at the time of the happening of the matters and things herein complained of, engaged in interstate commerce. In the Dowd case, the coal, or much of it, which was intended for interstate commerce, but which was prevented from flowing therein by the unlawful acts of the defendants there, had not been mined, and, therefore, was not in existence as a commodity of any sort of commerce for transportation; moreover, one of the plaintiffs had not engaged in business at all, but was preparing to do so, and was prevented by defendants therein from so doing. So, also here, the goods for which plaintiffs had orders in interstate commerce, and which were to be manufactured for shipment therein, were not in existence. They were prevented from coming into existence by the conspiracy of defendants and by the unpeaceful and unlawful overt acts done and committed by defendants in the carrying out of the conspiracy. The broad language of the Dowd case regarded, the additional fact in that case that a loaded car of coal was actually destroyed would seem too negligible a factor to call for a difference in the rule.

Therefore, following the rule so clearly announced in the Dowd case and the Coronado Coal Company case, as in duty bound, I am constrained, regardless of my own views, to hold that the plaintiffs here were engaged in interstate commerce and that the acts of defendants operated as restraints upon that commerce within the purview of the first section of the Sherman Anti-Trust Act.

I may dispose of the question of the existence of the conspiracy more briefly and with less difficulty, at least in my own mind. In order to do this logically a brief reference may again be made to the facts. These facts substantially are, that efforts to agree with plaintiffs on a new contract of employment having failed, the Local Unions, who are the defendants here, immediately called a general strike against the shops of all of the plaintiffs, and thereupon practically all of the employes of plaintiffs quit work and many of them began to picket plaintiffs' shops. This picketing was done in a way that was not lawful, and which is not legally permissible, even under the broad provisions of the Clayton Act. Defendant unions appointed committees to take charge of and manage this strike, which, of course, largely meant to manage the pickets who were engaged in picketing the shops of plaintiffs. No extra pay seems to have been given to those members of the Union who did picket duty, though apparently the pickets (as were others of the striking employes) were paid strike benefits by the respective unions to which they belonged. The pickets volunteered for duty, but as said above, they were in charge of the committees of the Local Unions. If these pickets committed unpeaceful and unlawful acts, therefore, absent any protest or disciplinary action by the Local Unions, the latter are liable for such acts. The Unions cannot be heard to say that having charge of and controlling these pickets, they are not to be held liable for the divers unlawful acts done by the pickets. If it be said that the Unions in such case should have some knowledge or notice of the unlawful acts committed by pickets

employed by them, and I think this ought to be conceded, the answer is that such knowledge and notice may be inferred from all the facts and circumstances shown by the evidence.

Neither is it necessary to prove the conspiracy alleged in the complaint by direct evidence. Such a conspiracy may be shown by circumstantial evidence. If the rule were otherwise it would ordinarily be impossible to establish a conspiracy in any case; a fortiori, in a labor dispute.

I conclude that the facts and circumstances disclosed a conspiracy within the meaning of the law, and that the direct and positive effect of that conspiracy was to hurt and injure the interstate commerce of plaintiffs as that commerce has been defined in this circuit.

It allows that the permanent injunction prayed for by plaintiffs ought to be granted. Let a decree be drawn accordingly.

(Indorsed: "Filed Nov. 6 190 W. W. Nall, Clerk.")

APPENDIX B.

Majority Opinion of the U. S. Circuit Court of Appeals for the Eighth Circuit.

Sanborn, Circuit Judge.

This is an appeal by United Leather Workers' International Union, Local Lodge No. 66, an association of about 600 union workmen of St. Louis, Missouri, and about 25 individual members of that association, defendants below, from a final decree of the District Court which enjoined them from compelling or inducing any of the employes of the plaintiffs, corporations of Missouri, whose places of business were in St. Louis, by threat, intimidation, force, abusive, violent or insulting language, the threat of superior numbers or pickets, by assaulting, threateningly accosting, laying hands upon, by following them to their homes, or intimidating the members of their families, to leave the service of the plaintiffs or to fail or refuse to perform their duties to the latter as such employes.

The plaintiffs were five corporations of the State of Missouri, who for a long time had been and were on and prior to the 10th day of April, 1920, engaged in selling, on orders from their customers, the great majority of whom were residents and citizens of other states than Missouri and had their places of business therein, manufacturing and shipping to such customers at their places of business, trunks, leather goods, and bags, which by such orders the customers bought and directed the plaintiffs to make and ship to them.

(1) This suit was founded on Section 1 of the Sherman Anti-Trust Act, which reads:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal" (Comp. Stat., Sec. 8820, Act of July 2, 1890; 26 Stat. 209, c. 647, Sec. 1).

The complaint of the decree is that the evidence is insufficient to sustain it because, although it conclusively established the facts that the defendants conspired to and did by unlawful means such as too many pickets, assaults, threats, and intimidation of employes and those seeking employment of the plaintiffs, restrain and stop the theretofore continuous streams of the plaintiffs' interstate commerce, and prevent the plaintiffs' performance of their interstate commerce contracts of sale, they did this by preventing the plaintiffs from manufacturing the articles they had contracted to sell, make, and deliver in interstate commerce, and because the defendants stopped the flow of this interstate commerce in this way for the purpose of compelling the plaintiffs to employ union men only and to comply with other demands of the defendants.

The ordinary course of business of parties selling, making, and shipping goods on orders of their customers is to furnish such customers with lists of the goods they offer to make and sell and the prices thereof, for the customers to send to the vendors written orders for the goods they wish to buy at those prices, the receipt and acceptance of which the

sellers acknowledge in writing. Thereupon such orders become legal and binding contracts on the part of the sellers to make and ship the articles to the customers at the places specified therein and on the part of the customers to receive and pay the specified prices for the goods (Rearick v. Pennsylvania, 203 U. S. 507, 511, 27 Sup. Ct. 159, 51 L. Ed. 295). The evidence was that when the defendants stopped the interstate commerce of the plaintiffs by stopping the making of the goods their customers had ordered the plaintiffs had such unfilled orders or contracts for the sale, manufacture, and shipment to their customers at the latters' places of business in states other than Missouri of these respective values: Herkert & Meisel Trunk Company, $200,000; James A. Quirk & Co., $15,000; F. A. Kolb Trunk & Case Company, $5,000; the Stability Leather Goods Company, $32,000; P. C. Murphy Company, $75,000—aggregating $327,000. The Supreme Court has declared that—

> "Where the contract is for the sale of the article and for its delivery in another state, the transaction is one of interstate commerce, although the vendor may have also agreed to manufacture it in order to fulfill his contract of sale. In such case a combination of this character would be properly called a combination in restraint of interstate commerce, and not one relating only to manufacture" (Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 246, 20 Sup. Ct. 96, 109 [44 L. Ed. 136]).

Indeed, the established rule is that "interstate commerce," within the meaning of that term in the Constitution and the Anti-Trust Act, embraces far

more than the mere sale, exchange, and interstate transportation of the goods. It includes intercourse, it comprehends every contract, trade, and dealing between citizens of one state and those of another which contemplates the transportation of goods, persons, or information from one state into another, and every initiatory, negotiating, and intervening act of the parties to that trade or deal from the time the intercourse relating to it commences until the transportation and delivery have been completed. Butler Bros. Shoe Co. v. United States Rubber Co., 156 Fed. 1, 17, 84 C. C. A. 167; International Text-Book Co. v. Pigg, 217 U. S. 91, 107, 30 Sup. Ct. 481, 54 L. Ed. 678, 27 L. R. A. (N. S.) 493, 18 Ann. Cas. 1103; Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 42 Sup. Ct. 106-108, 66 L. Ed. ...; United States v. Reading Co., 226 U. S. 324, 367, 368, 33 Sup. Ct. 90, 57 L. Ed. 243; Hopkins v. United States, 171 U. S. 578, 598, 19 Sup. Ct. 40, 43 L. Ed. 290; United States v. Swift & Co. (C. C.) 122 Fed. 529, 531; Welton v. State of Missouri, 91 U. S. 275, 23 L. Ed. 347; Caldwell v. North Carolina, 187 U. S. 622, 629, 23 Sup. Ct. 229, 47 L. Ed. 336; United States v. Tucker (D. C.) 188 Fed. 741, 742; Marienelli v. United Booking Offices of America (D. C.) 227 Fed. 165; In re Selman Heating & Plumbing Co. (D. C.) 204 Fed. 839, 840, 841-843; Robbins v. Shelby Taxing District, 120 U.S. 489, 497, 7 Sup. Ct. 592, 30 L. Ed. 694; Globe Elevator Co. v. Andrew (C. C.) 144 Fed. 881, 882.

(2) Under these authorities the contracts evidenced by the unfilled orders were contracts and transactions in interstate commerce. The acts of the customers in sending the orders were initiatory acts in contracts

in interstate commerce. The receipt and acknowledgment of the receipt of the orders, the manufacture of the goods pursuant thereto, the packing, loading, shipping of them were intermediate steps and parts of, and the delivery and payment for the goods were the final steps of contracts and transactions in interstate commerce, and the direct restraint, and for a time the complete prevention and thereafter the partial prevention of the taking of these steps by the unlawful means used by the defendants proved by the evidence, whether that restraint was imposed upon the selling, the making, the packing, the loading, the shipping, or the transportation of the goods, was the very restraint denounced by the Anti-Trust Act and brought the subject-matter of, the parties to the suit, and the relief the court granted far within the jurisdiction of the federal court under the Anti-Trust Act. Thus, Mr. Justice Harlan, delivering the prevailing opinion in Northern Securities Co. v. United States, 193 U. S. 197, 329, 24 Sup. Ct. 436, 453, 48 L. Ed. 679, said:

> "In United States v. E. C. Knight Company (156 U. S. 1), it was held that the agreement or arrangement there involved had reference only to the manufacture or production of sugar by those engaged in the alleged combination, but if it had directly embraced interstate or international commerce, it would then have been covered by the Anti-Trust Act and would have been illegal."

And in Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 242, 20 Sup. Ct. 96, 107 (44 L. Ed. 136), the Supreme Court said:

> "When Congress has enacted a statute such as the one in question, any agreement or combina-

> tion which directly operates, not alone upon the manufacture, but upon the sale, transportation and delivery of an article of interstate commerce, by preventing or restricting its sale, etc., thereby regulates interstate commerce to that extent and to the same extent trenches upon the power of the national Legislature and violates the statute."

The execution of the combination or conspiracy of the defendants had exactly that effect. It directly operated and that operation was its patent and inevitable effect, not alone upon the manufacture, but upon the sale, transportation, and delivery of the articles the plaintiffs had contracted to sell, make and deliver in interstate commerce.

Moreover, the evidence establishes the facts that for years the plaintiffs had been and were, when the operation of the defendants' combination stopped them, continuously conducting vast currents or streams of interstate commerce in such articles as they contracted to sell, make, and deliver from the State of Missouri into other states where their customers received them. The evidence shows that the great body of the goods the plaintiff sold, made, and delivered were sold and shipped to customers in other states than Missouri; that two of the plaintiffs sold goods of the value of $2,950,000 per year; and that while the exact volume of the business of the other three does not appear, it is a fair inference from the proof that the five plaintiffs were pouring into the channels of interstate commerce goods of the value of at least $2,500,000 per annum. This course of business determined and demonstrated that the transac-

tions of these plaintiffs in causing and conducting these currents including the order contracts for the sale, making, transportation, and delivery of the goods in other states, the selling, the manufacture, the loading, shipping, and delivery of these goods at their destinations constituted interstate commerce. Stafford v. Wallace, 258 U. S. ..., 42 Sup. Ct. 401, 402, 403, 66 L. Ed. ...; Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 42 Sup. Ct. 106, 109, 66 L. Ed. ...; Lemke v. Farmers' Grain Co., 258 U. S. 50, 42 Sup. Ct. 244, 247, 66 L. Ed. ...; Swift & Co. v. United States, 196 U. S. 375, 25 Sup. Ct. 276, 49 L. Ed. 518; Eureka Pipe Line Co. v. Hallanan, 257 U. S. 265, 42 Sup. Ct. 101, 102, 103, 66 L. Ed. ...; United Fuel Gas Co. v. Hallanan, 257 U. S. 277, 42 Sup. Ct. 105, 106, 66 L. Ed. .... "When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another state from that of the seller and of the cattle." Swift & Co. v. United States, 196 U. S. 398, 399, 25 Sup. Ct. 276, 280 (49 L. Ed. 518). And where customers in other states order goods to be made by sellers in Missouri and shipped to them in the other states, sellers accept such orders, agree to so sell, make, and ship the goods and do so, and this is a typical constantly recurring course of action, the cur-

rent thus existing is a current of commerce among the states and the manufacture of the goods pursuant to the contracts is as much a part of that interstate commerce as is the contract of sale or the loading, the shipment, or the delivery. "The application of the commerce clause of the Constitution in the Swift case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another, which are ever flowing, are in their very essence the commerce among the states and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control." Stafford v. Wallace, 258 U. S. ..., 42 Sup. Ct. 403, 66 L. Ed. ....

(3) The rights of the plaintiffs to keep their business running, to the continuous flow of their currents of interstate commerce, were property rights which they were legally entitled to exercise. Quinlivan v. Dail-Overland Co. (C. C. A.) 274 Fed. 56, 66; Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461; King v. Weiss & Lesh Mfg. Co., 49 App. D. C. 377, 266 Fed. 257, 260.

(4, 5) Counsel argue that the defendants had no purpose to restrain the interstate commerce of these plaintiffs, that their only purpose was to force the plaintiffs to employ none but union men and to grant other demands which the defendants made, but one can hardly wink so fast as not to see that the real purpose of their prevention of the plaintiffs from manufacturing the articles they had contracted to

sell, make, and deliver in interstate commerce, and their prevention of the flowing of the currents of these articles in interstate commerce was to deprive the plaintiffs of their income from the sales and deliveries of the goods, and by this continuing loss of income to compel the submission of the plaintiffs to their demands. Moreover, the natural and inevitable effect of the prevention by the defendants of the making by the plaintiffs of the articles they had made interstate contracts to sell, make, and deliver was the prevention of their performance of their contracts and the prevention or partial prevention of their interstate commerce, and this result was so evident and unavoidable that the defendants could not have failed to know, to purpose, and to intend that this should be the result. "The conspirators must be held to have intended the necessary and direct consequences of their acts and cannot be heard to say the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result." United States v. Patten, 266 U. S. 525, 543, 33 Sup. Ct. 141, 145 (57 L. Ed. 333, 44 L. R. A. [n. s.] 352); Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 245, 256, 257, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461; Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 213, 20 Sup. Ct. 96, 44 L. Ed. 136; Duplex Co. v. Deering, 254 U. S. 443, 463, 467, 468, 41 Sup. Ct. 172, 65 L. Ed. 349, 16 A. L. R. 196. The defendants cannot be credited here with an innocent purpose or intent, and even if they could be they were guilty of

combining to use and of using unlawful means, assaults, threats, too many pickets, following employes to their homes, and like intimidating acts that scared the plaintiffs' employes to leave them and prevented those desiring employment from taking it. A combination or conspiracy to use unlawful means to accomplish a lawful purpose, and its execution by the use of such means, is as violative of the act as a conspiracy to accomplish an unlawful purpose by lawful means.

(6) It is contended that because manufacture is not commerce and is not interstate commerce, the restriction or prevention of the manufacture of articles which, by interstate commerce contracts and transactions, sellers have agreed to sell, make, transport to, and deliver in other states, and the prevention of existing interstate commerce in such articles in this way, is not remediable by federal courts under the Anti-Trust Act. It is true that manufacture alone is not interstate commerce. But it is equally true that when manufacture becomes an essential part of or an indispensable step in the execution of an interstate commerce contract or transaction, or in the continuously flowing current of interstate commerce, as such manufacture was and is in this case, it becomes a part of or step in that interstate commerce to such an extent that a federal court of equity is vested with the power and is subject to the duty to enjoin the execution of a combination or conspiracy to prevent or practically prevent the performance of such contracts or to prevent or drastically restrict such interstate commerce by preventing the manufacture which constitutes one of its indispensable intermediate steps or parts. While manufacture alone is not interstate

commerce, neither is buying or selling or contracting to buy or sell the goods or loading or packing or shipping the goods, when considered by itself alone, interstate commerce; yet each and all of these may become parts of and steps in interstate commerce, and when they so become, the restriction or prevention of these steps, which has the necessarily intended direct and inevitable effect of stopping or drastically restraining that interstate commerce by the execution of the conspiracy to restrain or destroy it, may be lawfully enjoined by a federal court.

In United Mine Workers of America et al. v. Coronado Coal Co. et al., 258 U. S. ..., 42 Sup. Ct. 570, at page 583, 66 L. Ed. ..., the Supreme Court, summing up the relation of coal mining to interstate commerce, said:

> "Coal mining is not interstate commerce and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce, unless the obstruction to mining is intended to restrain commerce in it, or has necessarily such a direct, material, and substantial effect to restrain it that the intent reasonably must be inferred."

The corollary conclusively follows that if the obstruction to coal mining is intended to restrict interstate commerce or necessarily has such a direct material and substantial effect to restrain it that the intent reasonably must be inferred, then such an obstruction to coal mining is an unlawful restraint to interstate commerce. So, while manufacture is not interstate commerce, its relation to interstate com-

merce is governed by the same rule. If the obstruction to it is intended directly to restrain interstate commerce, or if such obstruction necessarily has such a direct, material, and substantial effect to restrain it, that the intent so to do reasonably must be inferred, then such obstruction to manufacture is a direct restraint of interstate commerce remediable by the federal court under the Anti-Trust Act. The case in hand falls directly under this rule. The obstruction and prevention of the manufacture of the articles which the plaintiffs had made interstate commerce contracts to make, sell, and deliver, and to pour into their continuously existing currents of interstate commerce, could not have been made without the knowledge of the defendants that their direct, material, necessary, substantial, and inevitable effect would be to restrain or to prevent the plaintiffs' interstate commerce in such articles and thus to deprive them of their income; nor could it have been made without their reasonably inferred intent and purpose to obtain that result.

While the law governing cases of this class is the same in all cases, the conspiracies alleged, the evidence to sustain them, and the results in the various cases necessarily differ. In the case last cited, as that case was stated and treated by the Supreme Court, the gravamen of the charge of the conspiracy was to monopolize all interstate commerce in coal in the United States, and to prevent any interstate trade or commerce in the coal produced from nonunion mines. Thus the court said:

> "The plaintiffs charge that there has been and is a continuously operating conspiracy between

union coal operators and the International Union to restrain interstate commerce in coal and to monopolize it."

And it held that the plaintiffs were not entitled to recover against district No. 21 because "in a national production of from 10,000,000 to 15,000,000 tons a week, or in a production in district No. 21 of 150,000 tons a week, 5,000 tons a week, which the Bache-Denman mines in most prosperous times could not exceed, would have no appreciable effect upon the price of coal or nonunion competition." 258 U. S. ..., 42 Sup. Ct. 570, 582, 584, 66 L. Ed. .... And the court defeated the plaintiffs in that case because their entire production of coal was so small in proportion to the entire production in the nation that the complete prevention of the plaintiffs' production could not have had any direct material effect on the alleged attempt to monopolize all the coal production of the nation. In the case before this court now, the gravamen of the complaint is, not that the defendants attempted to monopolize all interstate commerce, but that the defendants conspired and were executing that conspiracy by unlawful means to prevent if possible, and to restrain as far as possible the flow of the plaintiffs' existing continuous currents of interstate commerce and the performance of the interstate commerce contracts which they had made to sell, make, and deliver the articles which were the subjects of that commerce to customers in states other than Missouri.

It was not essential to the right of the plaintiffs to relief by injunction by the court below that the object or effect of the defendants' conspiracy and its execution should obstruct all interstate commerce or

all interstate commerce in that class of articles with which the plaintiffs were conducting interstate commerce, or that it should increase the price of such articles throughout the country. It was sufficient that the defendants' conspiracy was with the necessarily inferred intent, and that, as unlawfully executed by them, it had the effect directly and substantially to interfere with, restrain, and obstruct the large volume of interstate commerce which the plaintiffs were conducting to their irreparable injury. In the absence of the Anti-Trust Act, the plaintiffs had the right to conduct this interstate commerce. Congress has imposed no restraint upon it or them. The failure of Congress to impose any restriction on this commerce was in effect a declaration by that body that this interstate commerce should be free and untrammeled. Welton v. State of Missouri, 91 U. S. 275, 279, 282, 23 L. Ed. 347; Brown v. Houston, 114 U. S. 622, 631, 5 Sup. Ct. 1091, 29 L. Ed. 257; Walling v. Michigan, 116 U. S. 446, 455, 456, 6 Sup. Ct. 454, 29 L. Ed. 691.

Not satisfied that this declaration by inaction was sufficient, the Congress granted to the federal courts the power to protect the freedom of this interstate commerce by the Anti-Trust Act. That act provides that—

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal" (Comp. St., Sec. 8820).

In the succeeding section it denounces the monopolization of any part of trade or commerce among the

states. While monopolies of interstate commerce and of parts of that commerce thus fall under the ban of the act, it denounces with equal force, clearness, and particularity every combination and conspiracy which directly and unreasonably restrains, interferes with, or obstructs, although it does not monopolize, or tend to monopolize, interstate commerce or any class of it. Direct and substantial restraint, obstruction, or destruction of interstate commerce, or of substantial parts of it, pursuant to a conspiracy or combination, is as violative of the act as a monopoly thereof.

In the Debs Case, 158 U. S. 564, at page 581, 15 Sup. Ct. 900, at page 905 (39 L. Ed. 1092), Mr. Justice Brewer said:

> "It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of state legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a state to legislate in such a manner as to obstruct interstate commerce. If a state with its recognized powers of sovereignty is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that state has a power which the state itself does not possess?"

If the State of Missouri, by means of an act of its Legislature, had attempted to impose the restraint and obstruction upon interstate commerce which the defendants, through their conspiracy placed upon it in this case, the federal court, upon a proper application, would without doubt have prevented the success

of such an endeavor. That restraint and obstruction by the defendants clearly denounced as it is by the express terms of the Anti-Trust Act is much less justifiable than it would have been if imposed by the state.

Evidence of the interstate contracts, of the plaintiffs' currents of interstate commerce, of the unlawful acts of the defendants, of the times and manners of their commission, and of their direct and inevitable effect in preventing the performance of the plaintiffs' interstate commerce contracts, and in obstructing the currents of their interstate commerce, fully sustained the finding by the court below of the formation and existence of the conspiracy, of its execution by unlawful means, and of its inevitable effect, and well warranted the issue of the injunction.

In Gable v. Vonnegut Machinery Co. (C. C. A.) 274 Fed. 66, 71, 72, the complainant, the Vonnegut Machinery Company, was the agent of the defendant, the Toledo Machine & Tool Company, the manufacturing company, under a contract with the plaintiff to pay the latter 7½ per cent on the sale of the plaintiff's production in states other than that of the tool company. Complainant brought suit and obtained an injunction against the tool company and some of its striking employes on the ground that the latter had formed and were operating a combination to prevent and which did prevent the tool company from manufacturing its usual production, and thereby restrained its interstate commerce and deprived complainant of its commission under its contract. The court held that the Vonnegut Company must be

aligned with the tool company and not against it. And that court finally held that—

> "The record before us is barren of evidence that the object of the strike was to interfere with interstate commerce. So far as appears, either directly or inferentially, the strikers' only object was to obstruct the operation of the tool company's plant" (274 Fed. at page 74).

On the other hand, in the case at bar the evidence convinces that the obstruction of the manufacture imposed by the defendants' combination and its execution by means of their unlawful acts necessarily had such a patent, inevitable, direct, and substantial effect in obstructing and preventing the plaintiffs' interstate commerce, that their intent to stop it, and if they could not stop it to restrain it as much as possible, must be reasonably inferred.

Counsel for the defendants cite Crescent Oil Co. v. State of Mississippi, 257 U. S. 129, 42 Sup. Ct. 42, 66 L. Ed. ..., which did not arise under the Anti-Trust Act, but involved the question whether a cotton gin operating in Mississippi and ginning cotton which the owner of the gin had bought and caused to be shipped to it from another state was an instrumentality of interstate commerce in such a sense as to withdraw it from the regulatory power of the state; Hammer v. Dagenhart, 247 U. S. 251, 268, 38 Sup. Ct. 529, 62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724, which involved the constitutionality of the act of Congress to regulate the transportation in interstate commerce of articles produced by child labor; Capital Dairy Co. v. Ohio, 183 U. S. 238, 22 Sup. Ct. 120, 46 L. Ed. 171, which questioned the constitutionality of

the legislation of Ohio relating to oleomargarine; Diamond Glue Co. v. United States Glue Co., 187 U. S. 611, 23 Sup. Ct. 206, 47 L. Ed. 328, wherein the constitutionality, as against contracts made before its passage, of an act of the State of Wisconsin requiring corporations incorporated elsewhere to file copies of their charters, to pay small fees, and to meet certain other requirements as a condition of doing business in that state, was involved, and other authorities less relevant including those adjudging the time when articles flowing in the currents of interstate commerce make their entrance and exit from it and determining the line of demarcation between the exclusive power of the United States under the commerce clause of the Constitution and the police and regulatory powers of the states. In the opinions in many of these cases cursory remarks may be found about the relation of manufacture to interstate commerce and to commerce, but they fall under the familiar rule that the authority of expressions and statements in the opinions of courts is always limited to the specific question which they were considering and deciding when they were used. Cohens v. Virginia, 6 Wheat., 264, 399, 5 L. Ed. 257; United States v. Wong Kim Ark, 169 U. S. 649, 679, 18 Sup. Ct. 456, 42 L. Ed. 890; Traer v. Fowler, 144 Fed. 810, 817, 75 C. C. A. 540.

On the other hand, the Supreme Court has repeatedly sustained suits in equity under the Anti-Trust Act to enjoin the operation of combinations to restrain or obstruct interstate commerce by restraining or obstructing manufacture that constituted a part of or a step in such commerce. Addyston Pipe & Steel Co. v. United States, 175 U. S. 212, 240, 241, 246, 20

Sup. Ct. 96, 44 L. Ed. 136; Montague & Co. v. Lowry, 193 U. S. 38, 45; American Column & Lumber Co. v. United States, 257 U. S. 377, 42 Sup. Ct. 114, 66 L. Ed. .... In Pennsylvania Sugar Refining Co. v. American Sugar Refining Co., 166 Fed. 254, 256, 258, 259, 92 C. C. A. 318, the plaintiff corporation, which had been engaged in importing raw sugar into Pennsylvania, there manufacturing it into refined sugar, selling and shipping it to customers in other states and countries, had ceased to do business during the Spanish War. That corporation, after consideration, formed the intention of engaging in business of that character again. The defendant corporation, which was engaged in the same class of business conspired with one Segal, who held a majority of the stock of the plaintiff, to prevent the latter from again commencing the business contemplated, by making a large loan to Segal, taking his stock and the authority to vote it as security for the payment of the loan, and by the exercise of this voting power prevented the plaintiff from again commencing its business of manufacturing and selling refined sugar in interstate commerce. The plaintiff's action was for treble damages under the seventh section of the Anti-Trust Act. U. S. Comp. Stat., Sec. 8829. The first defense was that the conspiracy charged related to manufacture and was consequently exempt from the prohibition of the Anti-Trust Act, and United States v. E. C. Knight, 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325, was cited. But the Circuit Court of Appeals of the Second Circuit held that the conspiracy was not violative of the act in the Knight case only because it did not directly restrain interstate commerce, but that the alleged

conspiracy in the Pennsylvania Refining Company's case to prevent the latter from manufacturing, selling, and shipping refined sugar at all naturally, directly, and inevitably restrained interstate commerce and entitled the plaintiff to relief under the Anti-Trust Act.

When the combination or conspiracy of the defendants in this case was formed and when its execution commenced by the strike, by the withdrawal at one time of nearly all the plaintiffs' workmen, the quick picketing with too many pickets of their plants, and the complete stoppage of their manufacture for the time being, the plaintiffs had made unfilled interstate commerce contracts, to sell, make, and ship to their customers in other states goods of the value of more than $300,000. They had existing continuously flowing currents of interstate commerce from Missouri to other states in the nation which carried their goods of the value of more than $2,500,000 per annum. In the execution of their combination, by too many pickets, by intimidation by numbers, by threats, by following to their homes, and by other unlawful and violent acts, the defendants scared many of the plaintiffs' remaining employes into withdrawing from their employment, and deterred those who wished to work for the plaintiffs from taking employment to such an extent that until they were restrained by the preliminary order of the court below they prevented the making of the articles the plaintiffs had contracted to sell, make, and deliver in interstate commerce and stopped the flow of the plaintiffs' currents thereof. And after the restraining order was issued they continued the execution of their conspiracy and their un-

lawful acts to such an extent that they continued to obstruct and restrain to a very large and damaging extent the amount of the plaintiffs' manufacturing and of their interstate commerce, so that but a small per cent of their normal currents of interstate commerce could flow. The necessary and inevitable effect of this prevention and restriction of the making of the articles the plaintiffs had contracted to make, sell, and deliver, was to prevent for a time and drastically restrain their interstate commerce. The defendants' purpose to prevent the plaintiffs' manufacture in order to compel them to employ none but union men and to grant other demands could not have been unaccompanied with their intent and purpose to prevent, if possible, and, if not, to restrict their interstate commerce and thus to stop or diminish their income, for only by such stoppage or diminution would the stoppage or restriction of manufacturing inflict the compelling injury they sought to impose. The defendants are estopped from denying the necessary direct inevitable effect of their acts. The prevention for a time and the subsequent restriction of the intermediate step of manufacturing the articles the plaintiffs had contracted to sell, make, and deliver in interstate commerce necessarily had such a direct, material, substantial, and inevitable effect to restrain the interstate commerce of the plaintiffs that the defendants' purpose and intent so to do must be reasonably inferred, both as a matter of fact and as a matter of law; as a matter of fact, because the evidence produces an abiding conviction that such was the intent and purpose of the defendants, and as a matter of law because they are estopped from deny-

ing that they had the intent and purpose to produce the direct, natural, necessary, and inevitable consequences of their acts. The decree below must accordingly be, and it is

Affirmed.

Reference is made to the opinion of this court in Silverstein v. Local No. 280, of the Journeymen Tailors' Union et al., 284 Fed. ..., which is filed herewith.

APPENDIX C.

Dissenting Opinion of Judge Stone.

Stone, Circuit Judge (dissenting).

This is an appeal by a labor organization, certain officials and members thereof from a final decree of injunction.

Appellants contest the jurisdiction of the court as a federal court. There is no longer room to question the applicability of the Sherman Act, within the limits of the Clayton Act (38 Stat. 730), to labor organizations and strikes. But the Sherman Act relates solely to interstate commerce, and the contention made here is that this conspiracy has no legal connection with interstate commerce. The facts necessarily bearing on this jurisdictional question are as follows: Appellees are trunk manufacturers. A part of their products are shipped in interstate commerce. Appellants desired to unionize the plants of appellees. If peaceful means failed, they designed to call a strike and so picket the plants as to prevent their operation until the appellees would submit to unionizing the plants. In pursuance of this plan, strikes were called and picketing put in operation. The evidence substantially shows that this picketing was conducted in an unlawful manner. **No attempt was made to prevent appellees from shipping any manufactured products or from receiving any raw material. There was no boycott of appellees' products or customers, no interference with interstate transportation, no purpose to interfere with such com-**

merce. The conspiracy was confined to preventing manufacture. The purpose of the conspiracy was to accomplish unionization by preventing manufacture and in so way includes as an object preventing appellees, by boycott or otherwise, from purchasing, selling, sending, or receiving products or materials. The jurisdictional question turns, therefore, on the point of whether a conspiracy for the sole purpose of unionizing a manufacturing plant is a restraint of interstate commerce because some of the articles which are prevented from being made are intended for interstate commerce and would normally enter therein.

My Associates deem this situation reveals a conspiracy to interfere with interstate commerce, within the meaning of the Sherman Act. The points they make in their able opinion are: (1) That the manufacture of articles contracted, intended, or normally going into interstate commerce, constitutes a part of interstate commerce; (2) that where the purpose of the conspiracy is to prevent the manufacture of such articles, the inevitable effect is to interfere with interstate commerce, therefore an intent to so interfere must be inferred and the conspirators be estopped from denying that such was the actual intent; (3) that the means of executing the conspiracy were unlawful. **I cannot concur in these views or the conclusion reached, because I think controlling decisions of the United States Supreme Court are to the contrary.**

As to the contention that because an article is contracted for, intended for, or normally enters into interstate commerce, the manufacture of it is a part of interstate commerce. This conclusion is based upon

the argument that if the manufacture is prevented, the article cannot enter interstate commerce, and therefore manufacture is an "intermediate step" in and an integral part of such commerce. **This is patently true as a result of logical reasoning,** but is it true when the problem before the court is to define that **somewhat difficult line which separates the powers of the nation over interstate commerce from the powers of the states over intrastate commerce and internal police regulation?** Such a problem must be solved along "practical" as well as logical lines. As said in Diamond Glue Co. v. U. S. Glue Co., 187 U. S. 611, at page 616, 23 Sup. Ct. 206, at page 208 (47 L. Ed. 328):

> "In modern societies every part is related so organically to every other, that what affects any portion must be felt more or less by all the rest. Therefore, unless everything is to be forbidden and legislation is to come to a stop, it is not enough to show that, in the working of a statute, there is some tendency, logically discernible, to interfere with commerce or existing contracts. Practical lines have to be drawn and distinctions of degree must be made. See, further, Kidd v. Pearson, 128 U. S. 1, 21; Coe v. Errol, 116 U. S. 517, 525, 527; Tredway v. Riley, 32 Neb. 495."

If this were otherwise, as said, in Hammer v. Dagenhart, 247 U. S. 251, at page 272, 38 Sup. Ct. 529, at page 531 (62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724), "all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the states, a result certainly not contemplated by the

framers of the Constitution when they vested in Congress the authority to regulate commerce among the states.' Kidd v. Pearson, 128 U. S. 1, 21."

In both of the preceding quotations, citation is made of Kidd v. Pearson, 128 U. S. 1, 21, 9 Sup. Ct. 6, 32 L. Ed. 346. The reasoning contained in that citation, approved in these later cases, as set out on page 21 of 128 U. S., on page 10 of 9 Sup. Ct. (32 L. Ed. 346), is as follows:

> "If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the states, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the states, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are, and must be, local in all the details of their successful management.
>
> "It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme,

when we regard the multitudinous affairs involved, and the almost infinite variety of their minute details.

"It was said by Chief Justice Marshall, that it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the several states was to secure uniformity of regulation against conflicting and discriminating state legislation. See, also, County of Mobile v. Kimball, supra, at page 697.

"This being true, how can it further that object so to interpret the constitutional provision as to place upon Congress the obligation to exercise the supervisory powers just indicated? The demands of such a supervision would require, not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent. Any movement toward the establishment of rules of production in this vast country, with its many different climates and opportunties, could only be at the sacrifice of the peculiar advantages of a large part of the localities in it, if not of every one of them. On the other hand, any movement toward the local, detailed, and incongruous legislation required by such interpretation would be about the widest possible departure from the declared object of the clause in question. Nor this alone. Even in the exercise of the power contended for, Congress would be confined to the regulation, not of certain branches of industry, however numerous, but to those instances in each and every branch where the producer contemplated an interstate market. These instances would be almost infinite, as we have seen; but still there would always remain the possibility,

and often it would be the case, that the producer contemplated a domestic market. In that case the supervisory power must be executed by the state; and the interminable trouble would be presented, that whether the one power or the other should exercise the authority in question would be determined, not by any general or intelligible rule, but by the secret and changeable intention of the producer in each and every act of production. A situation more paralyzing to the state governments, and more provocative of conflicts between the general government and the states, and less likely to have been what the framers of the Constitution intended, it would be difficult to imagine."

In applying this rule of practical logic to the question of whether or not manufacture of an article of interstate commerce is, as such, a part of interstate commerce, I find, as it seems to me, a long, unbroken line of decisions to the effect that it is not. These decisions, many in number, began in 1885 with Coe v. Errol, 116 U. S. 517, 6 Sup. Ct. 475, 29 L. Ed. 715, and came down to June, 1922, with the noted case of United Mine Workers of America v. Coronado Coal Co.

From these cases I will select a few quotations which, in my judgment, sustain the view that manufacture of articles to be shipped in interstate commerce is not a part of interstate commerce within the meaning of the Constitution, as construed by the Supreme Court. I am impelled to do so by my high regard for the ability and learning of the judges with whom I feel compelled to differ in this case. I shall endeavor, carefully, to choose, and italicize in part,

extracts which were not merely vagrant expressions of the court but such as were made directly applicable to determination of the issues there involved.

In the United Mine Workers' case, supra (decided June 5, 1922), this court was reversed for holding that mining coal was interstate commerce. The facts and issues in that case seem to me directly controlling here. There was a strike, the purpose of which was to unionize the mines in a certain locality. Here the strike was to unionize certain trunk factories, all of which were located in St. Louis, Missouri. Unlawful means were there, as here, used to carry on the strike; the only difference being that in that case such means went to the further extent of murder, riot, and arson. In that case, Chief Justice Taft, for the court, said:

> "Coal mining is not interstate commerce, and the power of Congress does not extend to its regulation as such. In Hammer v. Dagenhart, 247 U. S. 251, 272, we said: 'The making of goods and the mining of coal are not [interstate] commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof. Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. 439.' Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce."

In Lemke v. Farmers Grain Co. (decided February 27, 1922) the Court said:

> "Nor is this conclusion opposed by cases decided in this court and relied upon by appellants, in which we have had occasion to define the line

between state and federal authority under facts presented which required a definition of interstate commerce where the right of state taxation was involved, or **manufacture** or commerce of an intrastate character was the subject of consideration. In those cases we have defined the beginning of interstate commerce as that time when goods begin their interstate journey by delivery to a carrier or otherwise, thus passing beyond state authority into the domain of federal control. Cases of that type are not in conflict with principles recognized as controlling here."

In Crescent Cotton Oil Co. v. Mississippi (decided November 14, 1921) the Supreme Court considered the question of whether the Anti-Gin Act of Mississippi (Laws Miss. 1914, c. 162) interfered with interstate commerce. On that point the Court said:

"It is clear that these decisions cannot be of aid in determining the question we are now considering, which is whether a cotton gin operated by an oil company in Mississippi is rendered an instrumentality of interstate commerce by the fact that the owner of it ships out of the state, for its use in another state, all of the cotton seed which may be purchased in connection with its ginning operations. * * *

"The separation of the seed from the fiber of the cotton, which is accomplished by the use of the cotton gin, is a short, but important, step in the manufacture of both the seed and the fiber into useful articles of commerce; **but that manufacture is not commerce** was held in Kidd v. Pearson, 128 U. S. 1, 20, 21; United States v. E. C. Knight, 156 U. S. 1, 12, 13; Capital City Dairy Company v. Ohio ex rel. Attorney Gen-

eral, 183 U. S. 238, 245; McCluskey v. Marysville & Northern Railway Company, 243 U. S. 36, 38, and in Hammer v. Dagenhart, 247 U. S. 251, 252; Arkadelphia Milling Company v. St. Louis & Southwestern Railway Company, 249 U. S. 134, 151, 152. **And the fact, of itself, that an article when in the process of manufacture is intended for export to another state does not render it an article of interstate commerce.** Coe v. Errol, supra, and New York Central etc. Company v. Mohney, 252 U. S. 152, 155. When the ginning is completed the operator of the gin is free to purchase the seed or not, and, if it is purchased, to store it in Mississippi indefinitely, or to sell or use it in that state, or to ship it out of the state for use in another, and, under the cases cited, **it is only in this last case, and after the seed has been committed to a carrier for interstate transport, that it passes from the regulatory power of the state into interstate commerce and under the national power.**

"The application of these conclusions of law to the manufacturing operations of the cotton gins, which we have seen precede, **but are not a part of, interstate commerce,** renders it quite impossible to consider them an instrumentality of such commerce, which is burdened by the Anti-Gin Act, and the first contention of the plaintiff in error must be denied."

In Hammer v. Dagenhart, 247 U. S. 251, at page 272, 38 Sup. Ct. 529, at page 531 (62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724), the Court said:

"When offered for shipment, and before transportation begins, the labor of their production is over, and the mere fact that they were intended for interstate commerce transportation

does not make their production subject to federal control under the commerce power.

"Commerce 'consists of intercourse and traffic * * * and includes the transportation of persons and property, as well as the purchase, sale and exchange of commodities.' **The making of goods and the mining of coal are not commerce,** nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof. Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. 439.

"Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but **the production of articles intended for interstate commerce is a matter of local regulation.**

" 'When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another state.' (Mr. Justice Jackson in Re Green, 52 Fed. Rep. 113.) This principle has been recognized often in this court. Coe v. Errol, 116 U. S. 517; Bacon v. Illinois, 227 U. S. 504, and cases cited. If it were otherwise, all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the states. Kidd v. Pearson, 128 U. S. 1, 21."

In Kidd v. Pearson, 128 U. S. 1, at page 20, 9 Sup. Ct. 6, at page 10 (32 L. Ed. 346), the Court said:

> "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this Court in County of Mobile v. Kimball, 102 U. S. 691, 702, is as follows: 'Commerce with foreign countries, and among the states, strictly considered, consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities.' If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the states, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate and harvest his crop with

an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress and denied to the states, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform and vital interests—interests which in their nature are and must be local in all the details of their successful management.

"It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme, when we regard the multitudinous affairs involved, and the almost infinite variety of their minute details."

In Capital City Dairy Co. v. Ohio, 183 U. S. 238, at page 245, 22 Sup. Ct. 120, at page 123 (46 L. Ed. 171), the Court said:

"The contention that the statutes in question are repugnant to the commerce clause of the Constitution is manifestly without merit. All the acts of the corporation which were complained of related to oleomargarine **manufactured by it in the State** of Ohio, in violation of the laws of that state, and therefore operated on the corporation within the state and affected the product manufactured by it **before it had become a subject of interstate commerce.** Kidd v. Pearson, 128 U. S. 1; United States v. E. C. Knight Co., 156 U. S. 1. It results that the plaintiff in error is not in a position to assail the validity of the statutes, because of their supposed operation upon interstate commerce, and we are not called upon to express an opinion respecting the constitutionality of the statutes upon this assumption."

The cases from which the above quotations are taken, as well as the many other similar decisions

cited in those cases, establish the doctrine that the manufacture of goods, which are to be later transported in interstate commerce, is not a part of interstate commerce.

As to the second point in the majority opinion, to wit, the intent to interfere with interstate commerce: It is undoubtedly the law that a conspiracy formed with the specific intent to interfere with (usually by restriction of) interstate commerce is within the domain of national control and subject to the Sherman Act. This is true irrespective of the means employed toward its execution. Because this is so, there are cases in which the act has been held applicable where the means happened to be control of or prevention of production of the particular article of interstate commerce. Such are American Column & Lumber Co. v. U. S., 257 U. S. 377, 42 Sup. Ct. 114, 66 L. Ed. (decided December 19, 1921); U. S. v. Reading Co., 226 U. S. 324, 33 Sup. Ct. 90, 57 L. Ed. 243. But, in that character of cases, it was not the means employed to effectuate the conspiracy that brought it within the federal control. It was the specific, actually existing unlawful intent and purpose of the conspiracy which had that effect.

This record is entirely barren even of a suggestion that there existed here any actual intent to affect interstate commerce. The sole purpose of this strike was to benefit and strengthen the labor unions here involved by unionizing these particular plants. Of course, this was intended to be accomplished by curtailing and, if possible, preventing complainants from manufacturing their products. This was to be

brought about by preventing them procuring the necessary labor except through employment of members of the union. But **there was no specific purpose or intent to affect interstate commerce such as was alleged, for example, in the United Mine Workers' Case, supar. Nor is there a word of testimony tending to show that the respondents had any knowledge of or cared anything about whether the business of complainants was state or interstate in character.** That consideration was unimportant to their purposes. Therefore, if an intent to interfere with interstate commerce is to be found it must be imputed, as matter of law, not fact, from the circumstances that to prevent this manufacture would naturally and inevitably prevent the products thereof going into interstate commerce.

It is generally true that men who do acts are presumed to intend the natural consequences thereof. But here again this logic and rule must be applied in a practical way. If it is not so applied the entire police power of the states is in danger of absorption by the national government. This is true because, in our complex social and economic life, production, as well as manufacture, of all kinds of things is generally followed by entrance of those articles, or some of them, into interstate commerce. This necessity for having always in mind constitutional limitations in applying such rules of logic and law has been repeatedly recognized and laid down by the Supreme Court. The applied rule is that state laws or individual acts which affect interstate commerce incidentally are to be distinguished from those which

affect it directly. The former are without, the latter are within, national control.

United Mine Workers v. Coronado Coal Co., supra;
U. S. v. Patten, 226 U. S. 525, 33 Sup. Ct. 141, 57 L. Ed. 333, 44 L. R. A. (n. s.) 325;
Ware & Leland v. Mobile County, 209 U. S. 405, 28 Sup. Ct. 526, 52 L. Ed. 855, 14 Ann. Cas. 1031;
Hooper v. California, 155 U. S. 648, 15 Sup. Ct. 207, 39 L. Ed. 297;
Leloup v. Mobile, 127 U. S. 640, 8 Sup. Ct. 1380, 32 L. Ed. 311—
And many other cases.

Whether an act, a course of conduct or a state statute affects interstate commerce incidentally or directly, within the above rule, depends upon the circumstances of each particular case. It is not shown, in this evidence, that the volume of interstate business of these complainants was such as to affect prices, in interstate commerce, of such goods, if these factories ceased their output. It is shown that they manufactured several million dollars' worth of goods annually and that much of this went into interstate commerce. But we are not, in any way, advised what percentage or proportion this business bore to the entire volume of interstate business in such goods. I do not think we are authorized, with no evidence whatsoever, to say that interstate business, as a whole, in this kind of products would be affected by this strike, and thus attempt to sustain our jurisdiction by bringing this case within the rule of application as laid down in U. S. v. Patten,

226 U. S. 525, 33 Sup. Ct. 141, 57 L. Ed. 333, 44 L. R. A. (n. s.) 325, and similar cases.

To my mind, the facts of this case are much stronger than the United Mine Workers' Case, supra, and there the Supreme Court found no jurisdiction, although it said:

> "The circumstances are such as to awaken regret that, in our view of the federal jurisdiction, we cannot affirm the judgment."

The consequences of a legal rule are often useful in testing its accuracy. **There can be no shadow of doubt as to the consequences of the rule laid down in the majority opinion. The natural, logical and inevitable result will be that every strike in any industry or even in any single factory will be within the Sherman Act and subject to federal jurisdiction provided any appreciable amount of its product enters into interstate commerce.** Moreover, if this be true as to the products produced in such industry or factory, it is entirely logical the same rule should apply to the raw materials used in such production if any of them are subjects of interstate commerce. In a practical sense, this would result in all strikes being subject to federal jurisdiction, because scarcely any factory is so small that some of its finished products do not enter into interstate commerce. **And yet the Supreme Court has, within the six months, held that a strike in a mine shipping seventy-five per centum of its coal in interstate commerce and involving many miners and much property was without the federal jurisdiction** (United Mine Workers' Case, supra), and that Court has never departed from, but has repeatedly and recently affirmed, the

doctrine, announced almost forty years ago, that manufacturing of interstate products is not interstate commerce.

As to the third basis of the majority opinion—that the means employed to execute this conspiracy were unlawful: Such means included intimidation and violence. The unlawful character of intimidation and violence is beyond question, but that has nothing to do with the question of whether punishment therefor or prevention thereof should be in the state or in the federal courts. In the United Mine Workers' Case, supra, the means employed were far more vicious than here, including arson, riot and murder. Yet it was not even suggested, in that bitterly contested case, that the means employed by the strikers had anything whatever to do with the jurisdiction of the court.

For the above reasons, I find myself unable to concur in the result or reasoning of my able associates, and therefore dissent therefrom. I am further sustained by the case of Gable v. Vonnegut Machinery Co., 274 Fed. 66, recently decided by the Court of Appeals for the Sixth Circuit. In that case, by far the greater part of the products manufactured, in the plants affected, went into interstate commerce and contracts were in existence for much of such future product. In discussing the scope of the Sherman and Clayton Acts that Court said (page 73):

> "Neither of these statutes furnishes a remedy against acts merely because they incidentally and indirectly affect interstate commerce; they apply only to acts which directly and immediately relate thereto. Manufacturing is not

commerce. None of the cases cited support the theory that a manufacturer may invoke the jurisdiction of the federal court merely because a strike interferes with the manufacture of his products which are sold generally in interstate commerce."

The Court further said (page 74):

"The record before us is barren of evidence that the object of the strike was to interfere with interstate commerce. So far as appears, either directly or inferentially, the strikers' only object was to obstruct the operation of the tool company's plant. The fact that shipment was interfered with, only because goods were not manufactured, merely incidentally and indirectly affected interstate commerce."

APPENDIX D.

IN THE

United States Circuit Court of Appeals.

EIGHTH CIRCUIT.

SEPTEMBER TERM, 1922.

UNITED LEATHER WORKERS INTERNATIONAL UNION et al., Appellants, vs. HERKERT AND MEISEL TRUNK COMPANY, a Corporation, et al., Appellees.	No. 5865.

PETITION OF APPELLANTS FOR REHEARING.

Now comes defendant, Local Lodge or Union No. 66 of the United Leather Workers International Union, A. M. Reuter, Al Birkenmeier, H. Ehlenbeck, Charles Kaysing, John Smith, Michael Little, John Lechner, Charles Morgan, Paul Berry, Edward Schilling, Ambrose Kintz, Stephen Wilhelm, Walter Dechant, Esther Bradley, Nora Wieland, Malley Colley, Wal-

ter Fleher, Thomas Halliburton, J. Perry, John Remstedt, Charles Reuben, Henry Schnitz, Benjamin Schnitz, Theo. Summers, Charles Tadesco, Fred Tentschert, Ray Watke, Walter Webber, John Zimmerman, Herman Dieckhorner, Joe Kuhn, Wm. Balmer, Robt. Ginner, Tom Caito, Frank Caito, Rudolf Koob, Anton Pauley, Leo Pauley, Robt. Worsing, Steve Zoeller, Tony Sanson, Annie Stecker, Sylvester Schnitz, Gus Nenninger and George Wenk, defendants and appellants in the above-entitled cause, and believing themselves to be aggrieved by the decision of this Court in the above-entitled appeal, hereby pray that the said decision may be set aside and that a rehearing of the said appeal may be granted by the Court for the following reasons, to wit:

(1) That the majority decision of the Court is based upon an erroneous construction of Section 1 of the Sherman Anti-Trust Act. Compiled Statutes of the United States, Section 8820, Act of July 2nd, 1890; 26 United States Statutes, Chapter 647, Section 1, and an erroneous application of the said law to the facts of this case.

(2) That the majority decision of the Court is in part erroneously based upon an argument stated to have been made in the said opinion and decision in the argument of counsel for defendants, to wit, that the only purpose of the defendants (appellants) was to force the plaintiff to employ none but union men and to grant other demands. No such argument having been made by counsel for defendants, nor is there any evidence of any character whatever in the entire record in this case that the defendant purpose in

the calling of the strike was to force the plaintiffs to employ none but union men, and the assumption by the Court that the defendants had such a purpose is based upon conjecture and not upon evidence as contained in the record of this case, and therefore, unfair to the defendants. (See page 6, majority opinion.)

(3) That the majority decision of the Court was based upon the erroneous assumption that a conspiracy existed amongst the defendants (appellants) to prevent the plaintiffs' manufacture in order to compel them to employ none but union men, there not being a particle of evidence in the entire record that the defendant entered into any agreement to compel the plaintiffs to employ none but union men. Nor is there any evidence in the said record from which the existence of such an agreement for such purpose could reasonably be inferred, and the assumption of such an agreement for said purpose was unwarranted by the evidence, purely conjectural and therefore unfair to the defendants.

(4) That the majority opinion of the Court in this case is in positive and direct conflict with the decisions of the Supreme Court of the United States in the cases of Kidd v. Pearson, 128 U. S. Reports, page 21; Coe v. Errol, 116 United States Reports, pages 517, 525, 527; Hammer v. Dagenhart, 247 United States Reports, pages 251, 272; United Mine Workers of America v. Coronado Coal Company, 42 Supreme Court Reports, pages 570, 583; Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 United States Reports, page 439; United States v. Patten, 226 United States Reports, page 525.

plaintiffs had interstate orders to fill, or that there was any conspiracy directed to an interference with the plaintiffs' interstate commerce, yet the majority opinion of this Court held that such intent and purpose could be implied from their acts, none of these acts—assuming them to have been done or perpetrated by the defendants—having been shown to directly affect the interstate commerce of the plaintiffs.

(12) That the majority decision of this Court is calculated to absorb not only the entire police powers of the State of Missouri, but a large part of the functions of the judiciary of the said state, and thereby violates the rights of these defendants (appellants) as citizens of the said State of Missouri under Arts. X and XI of the Amendments of the Constitution of the United States and under Section 2 of the Bill of Rights, Art. II of the Constitution of the State of Missouri.

(13) That the majority decision in this case is in conflict with the opinion of this Court in the case of Silverstein v. Local Union No. 280 of the Journeymen Tailors' Union, filed October 19, 1922, inasmuch as practically the same state of facts apply to both cases, and considered in connection with the opinion in the former case, the majority opinion in this case is discriminative against these defendants.

JOHN P. LEAHY,
LENA FRANK,
Solicitors for Appellants.

BRIEF IN SUPPORT OF PETITION FOR REHEARING.

Notwithstanding the carefully reasoned and able opinion of the majority of this Court in this case, we are still profoundly convinced that articles in process of manufacture or manufactured within the state, even though part or the greater part of these articles were contracted to be shipped in interstate commerce, can, in the light of the numerous decisions of the Supreme Court of the United States to the contrary, be held to form a part of interstate commerce so as to give to the federal courts jurisdiction, exclusive or otherwise, to determine controversies regarding such articles between citizens and corporations of the same state.

If an interference with interstate commerce can be legally inferred from any act whatever, where such act has the effect to create such interference indirectly, then we submit that it will not to any appreciable extent tax the ingenuity of persons seeking the interposition of the federal courts to the exclusion of the courts of the state to lay the basis for such jurisdiction by the mere assertion or averment in their petitions and the proof in the support of same that they are unable to fill their interstate commerce contracts because the parties on whom they sought to fasten the responsibility either did or neglected to do some act which had the effect of preventing the former from fulfilling such contracts.

Thus, if A be a manufacturer in Missouri and B, a resident of the same state, owes him a considerable

amount of money, and A needs that money to purchase materials or pay the help engaged in the production of articles intended or contracted to be shipped in interstate commerce, then upon a mere allegation that B, by refusing to pay him the money which he owes, has prevented him from fulfilling his contract to manufacture and ship the articles to customers outside of the state, A can (it seems to us), in the light of the opinion of this Court, assert an exclusive jurisdiction in the federal court of his claim against B for the money due.

And thus in a mere, simple contract of purely local concern and plainly detached from interstate commerce it is made possible in the enforcing of same for the party entitled to the benefit of the contract to seek his remedy in the federal court and to divest the state courts of the jurisdiction which properly belongs to them.

No matter how plausible the argument, or how well and closely reasoned the logic which leads to a condition of this sort, the condition itself is so plainly and violently at variance with the limitations imposed upon federal authority by the states, and so sweeping an encroachment upon the sovereignty and independence of the states themselves as to lead to the inevitable conclusion that the commerce clause of the United States is the death-trap of all state rights, and the whole scheme of our government system, epitomized in the declaration of an "indestructible Union composed of indestructible states" has been undermined and the authority of the states as independent sovereignties has passed to the centralized power, with all the disastrous effects which his-

tory teaches naturally and inevitably flow from centralization.

In the famous case of Texas v. White, 74 U. S. Reports 100 at 725 (7 Wall. 725), within short compass Chief Justice Chase has pointed out with a lucidity and directness that needs no elaboration the distinction between the rights of the federal government and the rights of the states under the Constitution of the United States in the following language:

> "Under the Articles of Confederation each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right not expressly delegated to the United States under the Constitution are reserved to the states, respectively, or to its people, and it may be not unreasonably said that the preservation of the states and the maintenance of their government are as much within the design and care of the Constitution as the preservation of the union and the maintenance of the national government.
>
> "The Constitution in all its provisions looks to an indestructible union composed of indestructible states."
>
> County of Lane v. State of Oregon, 74 U. S. Reports, page 76,

and we can't help thinking that the principle of constitutional law above declared is securely embalmed in the decision of the majority of the members of this Court in the instant case.

To this we take leave to add that, in our humble judgment, the liberal interpretations given to the commerce clause in the early decisions of the Su-

preme Court of the United States were aimed at construing the Constitution as allowing to the national legislature that discretion with respect to the means by which the powers it confers are to be called into execution which would enable that body to perform the high duties assigned to it in the manner most beneficial to the people (McCulloch v. the State of Maryland, 4 Wheat. 316), but, as stated in Martin v. Hunters Lessee, limited this interpretation so as to preserve intact the powers that properly belong to the state in the following language:

> "The Government of the United States can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given or given by necessary implication."

Continuously flowing currents of interstate commerce may be in the descriptive sense a picturesque and beautiful metaphor, but as applied purely to the interruption of or interference with process of manufacture it cannot logically become the basis of any rule attempting to define the point where state control ends and interstate control begins. Upon the contrary, it will, in our judgment, lead to a confusion which will make it impossible to preserve the distinction, for confusion will always follow where any other basis of distinction is made in relation to state and federal control of goods than the rule supported by the great weight of authority and never departed from, at least, by the Supreme Court of the United States, and which removes every species of perplexity from the solution of this question, and that rule as an-

nounced in Kidd v. Pearson, 128 U. S. Reports, 120, 121; United States v. Knight, 156 U. S. 112, 113; Lenke v. Farmers Grain Company (decided February 27th, 1922), and the other authorities cited in the appellants brief is:

> "Goods become the subject of interstate commerce when they begin their interstate journey by a delivery to a carrier or otherwise by passing beyond state authority into the domain of federal control."

His Honor, Judge Stone, in his dissenting opinion in this case, stated that he could not concur in the views or conclusions reached by his associates because he thought controlling decisions of the Supreme Court are to the contrary. In this we humbly submit that he was right. Outside of the mere personal gratification of the advocate who finds his contentions upheld, we yield our respectful tribute of admiration to an effort worthy of the finest traditions of federal jurisprudence in the upholding of a great fundamental principle of our government, which if once abandoned will leave but a debris of what once was a great nation composed of free and independent states.

Impressed with the gravity of this decision as bearing upon the question of the relations between federal and state governments, the distinguished jurist has not only pointed out the disastrous effect which will inevitably flow from federal control of state jurisdiction, but has, in our humble judgment, irrefutably demonstrated the absolute lack of proof in this case that the object of the strike was to interfere with interstate commerce. In his opinion, we think we are

upheld upon the proposition that the proof of a conspiracy, its intent and purpose must be established either directly or by facts which indubitably point to its existence, and that it can never be inferred from the effect alone.

We, therefore, shall not be guilty of the impertinence of attempting to enlarge upon the matters and questions which he has so ably discussed, but rest our argument upon his opinion as the most logical and convincing reasons for the granting of this petition.

As counsel for the appellants of the above cause and in such capacity charged with the responsibility of its conduct in the trial court and in this Court, we respectfully disclaim having made the argument in any of these courts attributed to us in page 6 of the majority opinion, either in brief or orally, viz., "that the only purpose of the defendants was to force the plaintiffs to employ none but union men"; upon the contrary we pointed out in brief with all the emphasis that we could command (see page 83, printed record) "that not only was there no proof offered in the evidence of the existence of a conspiracy on the part of the defendants to bring about the 'closed shop' policy in the factories of the plaintiffs," but counsel for the plaintiffs objected to any evidence being given on the part of these defendants as to cause which led up to the strike (see page 167 of printed record), which objection was sustained by the trial judge as the basis of this ruling declared the defendants had the right to strike. (See page 84 of printed record).

We also respectfully submit that the statement appearing in the majority opinion, page 15, as a conclu-

sion of fact "that the defendants purpose to prevent the plaintiffs' manufacture in order to compel them to employ none but union men, and to grant other demands" could not have been accompanied with their intent and purpose to prevent, if possible, and if not to restrict their interstate commerce, was not based upon any evidence appearing in the record, as an examination of the pages to which we have just referred will show, nor do we think that the existence of such a purpose can even be logically held within the limits of the extended application of the doctrine of intent as defined in the majority opinion.

It is true that the bill of complaint of the plaintiffs charged the existence of a conspiracy on the part of the defendants for the avowed object of forcing the plaintiffs to adopt the "closed shop" policy, but it is equally true that not only did the plaintiffs fail to make any proof of the existence of a conspiracy for such a purpose, but strenuously objected to the defendants' attempt to show that no such purpose existed, and to this we will add that such purpose could not have existed, for the plaintiff prior to the strike were maintaining closed shops.

We respectfully call the attention of the Court to the fact that the proof of three essential elements of a conspiracy is missing in the present case. These are:

(a) The confederating—the combining together of two or more persons.

(b) The intent—for the purpose.

(c) The object—of doing something unlawful or oppressive or immoral as a means to an end.

Eddy on Combinations, Vol. I, Sec. 365, page 238.

There was no proof of any conspiracy on the part of the defendants, there was especially no proof of the purpose as stated in the petition on the part of the defendants to bring about the "closed shop" policy, and there was no proof of the objects of such a conspiracy, for that, too, was to bring about the closed shop policy, as alleged.

> "The intent is a vitally essential element. There can be no conspiracy without a purpose expressed or implied to do something unlawful, oppressive or immoral as a means to an end, and before parties can be convicted of a conspiracy the elements of wrongful intent must be as fully proven as the element of confederating."
>
> Eddy on Combinations, Vol. I, Section 369.

> "Whether the proof be direct or circumstantial it must show what was the purpose of the combination."
>
> Eddy on Combinations, Vol. I, Section 369, page 241.

It is but natural that the trend of the judicial mind should lean strongly against an interference with a control of their business by the owners of same. The great economic questions which underlie the relations of capital and labor are forgotten and the strictest and sometimes the harshest limitations are placed upon the rights of labor to organize and to protect its interest, and this probably is responsible for a laxity in the application of the rules of evidence which finds no precedents in other cases.

The appellants strongly objected at the trial of this cause to the introduction of testimony in support of the allegation of a conspiracy of persons not shown to

be affiliated with their organization, and whose names or identity were not even disclosed. The record teems with this sort of evidence. The impossibility of making a defense to this class of testimony is the most eloquent testimony to its unfairness.

> "It is fundamental that no evidence ought in strictness to be given by strangers to the record in order to effect the defendants until the fact of a conspiracy with them is shown."
>
> Greenleaf on Evidence, Vol. I, Section 92.

Most of the evidence offered on the part of the plaintiffs against these defendants was that of entire strangers to the record, many of whom were not named, and although the trial court ruled that this evidence should be connected up and that the defendants should be connected with it, yet such testimony in large part forms the basis of the majority opinion of this Court, that the defendants were guilty of the acts charged against them.

We understand that very recently, in the opinion not yet published, the Circuit Court of Appeals for the Seventh District has held in the case of Danville Local Union 115 of the United Brick and Clay Workers v. Granville Brick Company, where a similar state of facts as in the instant case existed, that interference with the manufacture of goods, although intended for interstate shipment, did not give the federal courts jurisdiction in an injunction proceeding.

We respectfully submit that a rehearing of this appeal should be granted.

JOHN P. LEAHY,
LENA FRANK,
Solicitors for Appellants.

I, John P. Leahy, hereby certify that I am the solicitor and of counsel for the above-named appellants and petitioners; that I personally attended the taking of all the testimony in the above-entitled cause; that I have carefully examined the record, opinion and briefs therein; that I am duly authorized by the appellants to execute and present the foregoing petition for rehearing; that I prepared said petition and believe the statements therein made to be true; that I believe this Court erred in its decision as specified in the foregoing petition and that appellants have a just and meritorious cause for rehearing.

Dated this 9th day of December, 1922.

John P. Leahy,
Solicitor and of Counsel for the
Appellant Petitioners.

Suscribed and sworn to before me this 9th day of December, 1922.

My term expires February 22, 1926.

Harriet Cox,
(Seal) Notary Public.

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WM. R. STANSBURY

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

UNITED LEATHER WORKERS INTERNATIONAL UNION et al.,
Appellants,

vs.

HERKERT & MEISEL TRUNK COMPANY, a Corporation, et al.,
Appellees.

No. 233

STATEMENT, BRIEF AND ARGUMENT FOR APPELLANTS.

JOHN P. LEAHY,
Solicitor for Appellants.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

UNITED LEATHER WORKERS INTERNATIONAL UNION, LOCAL LODGE OR UNION NO. 66; A. M. REUTER, AL BIRKENMEIER, H. EHLENBECK, CHARLES KAYSING, JOHN SMITH, MICHAEL LITTLE, JOHN LECHNER, CHARLES MORGAN, PAUL BERRY, EDWARD SCHILLING, AMBROSE KINTZ, STEPHEN WILHELM, WALTER DECHANT, ESTHER BRADLEY, NORA WIELAND, MALLEY COLLEY, WALTER FLEHER, THOMAS HALLIBURTON, J. PERRY, JOHN REMSTEDT, CHARLES REUBEN, HENRY SCHNITZ, THEO SUMMERS, CHARLES TADESCO, FRED TENTSCHERT, RAY WATKE, WALTER WEBBER, JOHN ZIMMERMAN, HERMAN DIECKHORNER, JOE KUHN, WM. BALMER, ROBT. GINNER, TOM CAITO, FRANK CAITO, RUDOLPH KOOB, ANTON PAULEY, LEO PAULEY, ROBERT WARSING, STEVE ZOELLER, TONY SANSON, ANNIE STECKER, SYLVESTER SCHNITZ, GUS NENNINGER, GEORGE WENK and BENJAMIN SCHNITZ,

Appellants,

vs.

HERKERT & MEISEL TRUNK COMPANY, a Corporation, P. C. MURPHY TRUNK COMPANY, a Corporation, JAMES A. QUIRK TRUNK COMPANY, a Corporation, STABILITY LEATHER GOODS MANUFACTURING COMPANY, a Corporation, and H. A. KOLB TRUNK & CASE COMPANY, a Corporation,

Respondents.

No. 878.

STATEMENT.

The plaintiffs (complainants) in the bill of complaint filed in this case are and were at the time the proceedings were instituted corporations of the State

of Missouri having their principal offices and manufacturing plants in the City of St. Louis, in the State of Missouri. At the time of the filing of the complaint and prior thereto they and each of them were engaged in the manufacture of trunks and leather goods and employed a number of persons engaged in that craft in the city and state above mentioned. The defendant Local Union No. 66 is a voluntary association affiliated with the United Leather Workers International Union and also had its offices and was doing business at the times stated in the City of St. Louis and State of Missouri. All the defendants named in the bill, except Edward Schilling, Henry Schnitz, Robert Worsing (who were not served with the process of the court, did not appear and were not therefore included within the scope of the injunction) and Al Birkenmeier, were employes of the various complainants and also members of the local union above referred to, and all the said defendants were and are citizens of the State of Missouri.

The plaintiffs had established an association of trunk manufacturers of which they each were members and through this association they had entered into a contract with Local Union No. 66 and the employes who were members of the union, in which the plaintiffs maintained what was known as a

"closed shop," that is, that all the employes engaged in the manufacture of the trunks and leather goods were members of the labor union.

A little while previous to February 28th, 1920, the term provided in this contract had expired and negotiations were entered into between the plaintiffs and the officials of the local union representing the employes of the plaintiffs for the purpose of arriving at a basis upon which fresh contracts might be made between them. These negotiations resulted in a disagreement between both parties, and being unable to obtain a renewal of their contract, the defendants named in the bill of complaint and served left the employment of the plaintiffs. A strike was called by the local union in the regular way, and in accordance with the rules and regulations of the union of which the defendants were members.

The bill of complaint averred that each of the complainants were engaged, and had been for a number of years, in the business of manufacturing trunks, leather bags and leather goods in the City of St. Louis, Missouri; that they, and each of them, had a large number of customers in various states and territories of the United States to which they had been shipping and would continue to ship in interstate commerce goods manufactured in their various factories; that they were receiving and would continue to receive orders to ship goods in interstate com-

merce; that their customers were demanding shipments of the goods and would cancel their orders unless same were shipped promptly; that they were receiving and would receive large quantities of raw material in interstate commerce and foreign commerce from which the said trunks and leather goods were manufactured; that in operating their factories they employed a large number of persons, both men and girls, many of whom were timid, young and easily frightened and who were anxious to continue in the service of the complainants. The bill further recited that the factories of the complainants were located in the City of St. Louis at the places specified therein.

That the defendants on the 28th day of February, 1920, and thereafter illegally determined that each of the complainants should, on the 1st day of April, 1920, enter into a contract with the local union by which they would consent to unionize their business and adopt what is commonly called a "closed shop" policy, by which it is alleged was meant the complainants would not permit to work in their factories as trunk makers any persons who were not members in good standing of said local union, and if complainants refused to accept the demands to ruin the complainants' interstate commerce business.

The bill further alleged that on the 10th day of April, 1920, the defendants, acting individually and

for and on behalf of the local union, unlawfully conspired with each other and various other persons to injure and destroy the business of complainants and to prevent the employes of complainants from continuing their said employment unless they would yield to the defendants' demands, and that the defendants had sought and endeavored to induce, force and compel, and did so induce, force and compel, the employes of the complainants to stop working for them, and that in pursuance of the conspiracy had inaugurated a strike against the complainants, and each of them, and that in further pursuance of the alleged unlawful conspiracy that they had assaulted, threatened and abused complainants' employes, and by following these employes to and from their homes and by the use of abusive language and boisterous conduct had so intimidated the employes as to force them to quit the complainants' employ against their wills, and thereby prevented complainants from engaging in and carrying on their said interstate commerce business and interfered with and obstructed the complainants in the manufacture and the shipment of the products of their various factories sold to be shipped in interstate commerce.

The bill further averred that the defendants, their associates and confederates, pursuant to the alleged conspiracy and with the intent to injure and ruin the business of complainants, and each of them, and in-

terfere with their interstate shipments, declared a boycott against the complainants and were prosecuting the same by the said unlawful methods.

The bill further alleged that the defendants, in pursuance of the unlawful conspiracy heretofore mentioned, had, since the inauguration of the boycott, kept a large number of men who by force of numbers menaced and threatened the employes or persons seeking to become employes of the complainants as to prevent them from entering the complainants' places of business for the purpose of destroying their interstate commerce, and to prevent the complainants from carrying out their contracts with their customers; that the defendants continued the mass picketing for the purpose aforesaid, and would continue to do so unless enjoined and restrained; that the defendants had caused, induced and coerced a large number of the employes of the complainants, against their will, to quit complainants' employment and were continuing to use the same methods for the purpose of forcing and coercing more employes to quit their said employment against their wills; that a large number of the employes who had been so forced out would return to their work just as soon as they could get protection.

The bill further averred that the defendants well knew at the time of entering into the alleged unlawful conspiracy that complainants, and each of them,

were engaged in interstate commerce and were receiving and would continue to receive in the ordinary course of their business large quantities of goods in interstate commerce; that the defendants by their unlawful acts maliciously obstructed and prevented the complainants from procuring the necessary help to receive and ship goods in interstate commerce, and that they declared that they would continue to do so unless the complainants accepted their demands.

The bill further alleged that the conspiracy hereinbefore set forth was in violation of the express provisions of the Sherman Antitrust Act, approved July 2, 1890, and of the Clayton Act, approved October 15, 1914.

The bill further averred that **the complainants controlled the entire business of manufacturing trunks and leather bags in the City of St. Louis, and that that result had been obtained by great labor and effort upon their part and at great expense** (Tr. of Rec., p. 7).

The bill further averred that the defendants had conspired to monopolize labor in preparing goods in complainants' line of manufacture, contrary to the interstate commerce clause in the Sherman and Clayton Acts, and that the strike was being conducted in direct violation of the provision in said acts, and the bill prayed for an injunction and an accounting.

On affidavits filed in support of the averments of the bill, a restraining order was issued by the District Court (Tr. of Rec., p. 23). The return to the rule to show cause was duly filed by the defendants (Tr. of Rec., p. 28), followed by the answer of all the defendants (Tr. of Rec., pp. 32-36, inc.) except the four who had not been served with a copy of the process, which answer averred that the bill of complaint did not state facts sufficient to entitle the plaintiffs to the relief sought nor to any equitable relief; that the allegations of the bill were indefinite, uncertain and stated no overt acts of the defendants or either of them in pursuance of the conspiracy alleged to exist. The said answer specifically denied the allegations of the petition and further set up that the complainants and each of them had unlawfully, wrongfully and intentionally conspired with each other to establish a **monopoly and trust** in the manufacture of leather goods in the City of St. Louis and to unjustly discriminate against the defendants who were members of the local union by seeking to compel them to accept certain agreements relative to their employment with the said complainants, which permitted unjust discrimination to be made against them, and that although the complainants had entered into an agreement with the defendants as their employes, which fully provided the terms under which the defendants should work, yet that

thereafter the complainants repudiated the said agreement and endeavored to force the defendants to sign another agreement which would permit such unjust discrimination to be made against them while in the employ of the complainants as members of the local union, and that because of the fact of such unjust discrimination they peacefully withdrew from the employ of the complainants.

The answer further averred that the complainants were corporations of the State of Missouri, and that all the defendants were citizens of the said state, and that the Court **had acquired no jurisdiction whatever over these persons and had no lawful power to proceed with the trial thereof,** or to issue **an injunction against them, or grant the equitable relief sought by the complainants.** The prayer was for the dismissal of the bill (Tr. of Rec., pp. 32-36, inc.).

A hearing was had before the District Court on the application for temporary injunction, oral and documentary testimony on both sides being offered.

Francis Leo Murphy, secretary and manager of the P. C. Murphy Trunk Company, for the complainants (Tr. of Rec., p. 83), testified that his company did a business which approximated a million dollars a year; that it employed two hundred and twenty-five men; that on the 10th day of April, 1920, the men walked out; that at that time the company had seventy-five thousand dollars worth of orders, most

of which, after being filled, would be shipped in interstate commerce. This witness testified, over objections, that he had seen some of the defendants doing mass picketing around his factory, and as the result of their picketing they were unable to get their goods out; that he observed no acts of violence, but that he had seen two men stopped as they were coming in; that all the trunkmakers in the employment of his company walked out and that they had lost approximately fifteen thousand dollars as a result of his employes going out on a strike. On cross-examination this witness testified that he had not heard any of the pickets talking to any of the employes working for the company; that all these employes who had gone on a strike were members of Local Union No. 66, and that his company was a member of the association of trunk manufacturers; that they had taken representatives of all employes from the various factories, together with the factory managers or representatives, so that they could combine together and see that the same conditions prevailed in every factory.

John A. Meisel, president of the Herkert and Meisel Trunk Company, for the complainants (Tr., of Rec., pp. 162-168, inclusive), testified that his company had been in business for thirty years; that it sold goods all over the United States and in Mexico and Cuba; that it had

done during the past year business approximating one million nine hundred and fifty thousand dollars, and that after the strike was called all the men walked out. This witness was asked this question in direct examination:

> "Q. Have you shipped your full amount of goods or any amount of goods since the 10th of April, in interstate commerce?
>
> A. No, sir.
>
> Q. What happened to prevent you from shipping your goods in interstate commerce?
>
> A. The men going out on a strike" (Tr. of Rec., p. 164).

This witness testified as follows on cross-examination:

> "Q. Now, to your knowledge, Mr. Meisel, there was no active interference of any kind on the part of any of these strikers with the shipping of your goods in interstate commerce, as far as you know?
>
> A. Only to stop the people as they were trying to enter our factory to go to work.
>
> Q. That is all. Whatever occurred there occurred at the factory itself and not outside of it?
>
> A. Outside of the building.
>
> Q. Well, outside of the building, say, but there was no interference with the delivery of freight to the depot or any other place where freight

is usually received for interstate shipment, was there?

A. Not that I know of."

James A. Quirk, president of the James A. Quirk Trunk Company, one of the complainants, testified that the investment of their company was fifty thousand dollars and their loss during the strike was fifteen thousand dollars. On redirect examination this witness testified as follows:

"Q. Mr. Leahy asked you if your wagons were interfered with. You say they were not. Was the manufacture of your goods to be shipped in interstate commerce interfered with?

A. Yes, sir" (Tr. of Rec., p. 170).

Harry A. Kolb, president of the H. A. Kolb Trunk and Case Company, one of the complainants, testified that he had between five and six thousand dollars of interstate commerce orders, and over the objection of the defendants, that his loss was four or five thousand dollars as the result of the strike. On cross-examination this witness testified that he had never seen anybody interfered with in going to or coming from his factory, and was asked this question and made this reply (Tr. of Rec., p. 174):

"Q. And you don't know that any of your men or your wagons engaged in conveying

freight of your manufactured goods, or output, to the freight depots or trains were ever interfered with——

A. No, sir.

Q. ——since the strike? You don't know of one single instance?

That is all."

H. M. Wilson, president of the Stability Leather Goods Manufacturing Company, one of the complainants, testified that he had seen men around the company's factory; that to his present knowledge none of his men had been interfered with coming or going to work; that he had about thirty-three thousand dollars interstate commerce orders at the time of the strike. On cross-examination this witness testified that there had been, so far as he knew, no active interference on the part of any of the defendants with any of his employes or the employes of the corporations, and that none of the wagons or the drivers engaged in the conveyance of the manufactured articles to the freight depots or other places had been interfered with (Tr. of Rec., pp. 174-179, inclusive).

The trial judge found that the strike was called after a fruitless effort to agree on terms pursuant to a vote taken in the regular way; that the calling of the strike was followed by the quitting of the plaintiffs' employment of practically all their employes; that picketing was maintained around their plants

and various illegal acts were committed; that these unlawful acts prevented the plaintiffs from employing other workmen to take the places of the strikers, so that the plaintiffs were unable to manufacture the goods necessary to fill their interstate orders; **that there was no actual interference with or hindrance of any interstate movement or shipment of the goods made by plaintiffs or by either of them for the very simple reason that the goods had never come into existence on account of the interference mentioned, for as forecast, these goods could not be manufactured because the plaintiff's former employes had quit and other workmen could not be obtained to manufacture them,** these potential workmen being kept away by picketing, threats and intimidation; that such goods as were actually made were shipped without let or hindrance in interstate commerce (Tr. of Rec., p. 48). The Court found from the acts of the pickets the existence of a conspiracy amongst the defendants, but the Court did not find the existence of a conspiracy for the purpose set forth in complainants' bill, i. e., to unionize the plaintiffs' shops (Tr. of Rec., p. 53). The learned trial judge was of the opinion as expressed by him in the foregoing decision that upon the pleadings and the facts in evidence and particularly because the goods of the plaintiffs had not come into

existence as manufactured products and were not shipped, and that there had been no interference with such goods as were manufactured and shipped in interstate commerce; **that he did not have jurisdiction over the defendants,** but felt himself constrained **to hold the opposite view in deference to the opinion of this Court in the case of Dowd v. Mine Workers,** 148 C. C. A. 495 (Tr. of Rec., p. 50).

The defendants (appellants) hereinbefore named, filed a motion for a rehearing of the application for temporary injunction which was overruled. The parties on both sides then agreed that the cause should be submitted for final hearing on the pleadings and the evidence adduced in the application for temporary injunction and at the conclusion of same the Court granted a permanent injunction against the defendants hereinbefore named and rendered an opinion which will be found at pages 46 to 53, inclusive, of the transcript of the record and in the appendix to this brief.

Thereafter, the defendants (appellants) appealed to the United States Circuit Court of Appeals for the Eighth Circuit, and the case was argued before and duly submitted to that Court, which in a majority opinion on the 21st day of October, 1922, rendered by Circuit Judge Walter H. Sanborn and acquiesced in by Hon. Thomas E. Munger, District Judge, the

judgment of the trial court was affirmed and a permanent injunction was granted against the defendants, a copy of which is hereto attached, marked "Appendix B" (Tr. of Rec., p. 321). A dissenting opinion was filed by Honorable Kimbrough H. Stone, Circuit Judge of the United States Circuit Court of Appeals for the Eighth Circuit, a copy of which is hereto attached and marked "Appendix C" (Tr. of Rec., p. 334). A petition for a rehearing in the United States Circuit Court of Appeals was filed by the defendants, a copy of which is also attached and marked "Appendix D" (Tr. of Rec., p. 345), in which it is set forth that the majority opinion was based upon the erroneous construction of the Sherman Anti-Trust Act; that it was erroneously based upon an argument, stated to have been made in the opinion, of counsel for defendants that the only purpose of defendants was to force plaintiffs to employ none but union men and to grant other demands, and a denial that such argument had been made; that the majority decision was based upon the erroneous presumption that such conspiracy existed amongst the defendants to prevent the plaintiffs' manufacture in order to compel them to employ none but union men, there being not a particle of evidence in the entire record that the defendants entered into any agreement to compel the plain-

tiffs to employ none but union men. Nor was there any evidence in the record from which the existence of such an agreement for such purpose could reasonably be inferred; that the majority decision of the Court was in conflict with the decisions of the Supreme Court of the United States in the cases of Kidd v. Pearson, 128 U. S. Reports, page 21; Coe v. Errol, 116 U. S. Reports, pages 517, 525, 527; Hammer v. Dagenhart, 247 U. S. Reports, pages 251, 272; United Mine Workers of America v. Coronado Coal Company, 42 Sup. Ct. Reports, pages 570, 583; Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. Reports, page 439; United States v. Patten, 226 U. S. Reports, page 525; that the majority opinion of the Court misjudged and misinterpreted the decisions of the Supreme Court of the United States as applied to the facts of this case in the cases of International Text Book Company v. Pigg, 217 U. S. Rep., pages 91, 107; Dahnke-Walker Milling Company v. Bondurant, 42 Sup. Ct. Rep., 106, 108; United States v. Reading Company, 226 U. S. Rep., 324; United Mine Workers of America v. Coronado Coal Company et al., 42 Supreme Court Rep. 570; Northern Securities Company v. United States, 193 U. S. Rep., 197, 329; Addyston Pipe & Steel Company v. United States, 175 U. S. Rep., pages 211, 243; Duplex Company v. Deering, 254 U. S. Rep., 443, 463, 467,

468; Debs case, 158 U. S. Rep., 532, 581; that as averred in the bill of complaint and as shown by the record, the plaintiffs were corporations of the State of Missouri, and all the defendants were residents of the same state, and that the appellate court erred in holding that it and the trial court had jurisdiction of the case and averred that neither the trial court nor the appellate court under the law and the facts had any jurisdiction over the defendants; that the majority opinion of the Court was erroneous in holding that an intent to obstruct or interfere with plaintiffs' interstate commerce could reasonably be inferred from any acts or conduct of the defendants, and that such holding was unsupported by any evidence as shown by the record in the case; that the majority opinion was erroneous in holding that the manufacture of articles of the plaintiffs, contracted or intended, or normally going into interstate commerce constituted a part of interstate commerce, and that by reason thereof the trial court and the appellate court had no jurisdiction over the defendants in the case; that the majority opinion was erroneous in holding that there was any purpose on the part of the defendants to bring about any interference with interstate commerce as legally understood; that the majority opinion of this Court was violative of Article

IX and X of the Constitution of the United States in that it denied the rights of these defendants to a trial of their cause before the courts of the State of Missouri, of which they are citizens, and because it is an attempt to exercise judicial powers not delegated to the United States or its courts, but which are especially reserved to the State of Missouri and to its people by said Article X of the Amendments to the Constitution of the United States; that the majority opinion was erroneous in holding that the intent and purpose could be implied from the acts of the defendants, although there was not a suggestion in the entire record of the case that there was any actual intent upon the part of the defendants to affect or to interfere with the interstate commerce of the plaintiffs or any proof that the defendants knew that the plaintiffs had interstate orders to fill; that the majority decision of the Court was calculated to absorb not only the entire police powers of the State of Missouri, but a large part of the functions of the judiciary of the said state, and thereby violates the rights of these defendants (appellants) as citizens of the State of Missouri under Articles X and XI of the Amendments of the Constitution of the United States; that the majority decision in this case was in conflict with the opinion of the United States Court of Appeals for the

Eighth Circuit in the case of Silverstein v. Local Union No. 280 of the Journeymen Tailors' Un filed October 19, 1922, 284 Fed. Rep., page 449.

This petition was denied and the defendants thereafter filed their petition for appeal, which was duly granted to this Court.

As the trial court in its opinion and by and with the consent of the complainants deemed it essential to the proper determination of the case by the United States Circuit Court of Appeals for the Eighth Circuit, it was ordered that the entire testimony of the witnesses in the case taken at the hearing of the temporary injunction and submitted to the Court on the final hearing of the case as it was contained in the stenographic transcript should be reproduced in the exact words of the interrogators and witnesses, the same being in lieu of the narrative form provided for in Rule 10 of the United States Circuit Court of Appeals (Tr. of Rec., p. 81) and for the convenience of this Court we append hereto a brief summary of the evidence.

SUMMARY OF EVIDENCE.

The following is a brief summary of the evidence offered in support of the allegations of the bill:

Francis Leo Murphy, secretary and manager of the P. C. Murphy Trunk Company, for the appellees (complainants) (page 83, Printed Rec.; page 117, Original Rec.), said his company did a business which approximated a million dollars a year; that it employed two hundred and twenty-five men; that on the 10th of April the men walked out; that at that time the company had seventy-five thousand dollars worth of orders, most of which would, after being filled, be shipped in interstate commerce; that the men started picketing the plant after they walked out.

An objection was made to this testimony on the ground that unless the evidence showed that the defendants themselves were engaged in the act claimed to be unlawful, they would not be bound by the acts of other persons.

> "The Court: Of course, it must be connected up; these defendants must have been shown to have been connected with in in some way, either by virtue of a conspiracy or something of that sort. I will hear it and consider it or not after I find whether it has been connected in the proper way."

The witness was asked if he knew a number of men whose names were read out to him. He stated he did, and identified one of the defendants, Reuter, as belonging to the local union; that he had seen some of these men about his factory doing picket duty; that he saw from one man up to sixteen; that they would be around all day; they would be congregated in the evening.

"Mr. Leahy: I object to that kind of examination; I think it ought to be shown the specific dates on which the picketing was done, and the number of pickets that were present; that would only be fair to us.

The Court: You may get that matter in cross-examination.

Mr. Leahy: **In addition to that, most of the parties named here, with the exception of one, are not defendants in this case. I take it that this testimony will be admitted subject to the objection I have already made, if your Honor please. I don't desire——**

The Court: **Oh, yes.**

Mr. Holland: We have under the law, I think, until the final adjudication of this case; we have until then to bring them in if we want to, and they were all served with the notice, with your Honor's order——

Mr. Leahy: That is not the point I am referring to. I am representing the men that have been brought in here now, and, of course, no evidence of what any other person does or says

can affect the status of these defendants before the Court except they be, as your Honor indicated, connected with it in some way, by conspiracy or otherwise.

The Court: **They will have to be connected with some sort of conspiracy, of course; but the case is very, very young.**

Mr. Leahy: I don't want to take up the time of the Court unnecessarily, but I want my record made up and taken as made to all this testimony until the matter is connected, and then, at that time, if it is not connected——

The Court: It will be so considered. Proceed" (Printed Rec., p. 88).

He saw two men stopped by L. Berg and another man was stopped by Louis George; these men were on Fourteenth street; he further stated his company had lost approximately fifteen thousand dollars by the strike.

On cross-examination (Printed Rec., p. 92) the witness testified his factory had a frontage of 300 feet; that continuously during the strike there were three or four men doing picket duty; that he did not hear what Berg said to the men he stopped; that the contracts with the men had expired; that all the men that left the employment were members of the union; that they had an association of trunk manufacturers here, of which the plaintiffs were members.

The Court here intimated that it made no difference whether a combination existed amongst the manufacturers, they had a right to strike, and the only question he would consider was whether they behaved thmeselves after they went out on strike.

The witness further testified there was no interference with the shipment of the products of his factory (Printed Rec., p. 99).

Frank Mees, superintendent of Herkert & Meisel Company's factory, testified for the plaintiff (Printed Rec., p. 99; Original Rec., p. 140) there were 275 men employed in the factory. The picketing began on Monday morning as the men failed to report for work; that he had seen about fifty close to the factory; he saw them follow persons up and down the street, tap some of these and talk to them. Witness was asked if he knew a number of men whose names were read to him. He said about two or three belonged to the local union; that all the men that worked in his factory belonged to the local union.

On cross-examination Mr. Mees said that his factory covers about 150 feet frontage on Chestnut street; that nobody went to work on Monday, when the strike was declared, and that it was two weeks after the declaration of the strike that they secured any people to work; that on Monday there were three pickets, and sometimes there were ten in the

evening; that these were 125 feet to the west and some others about 225 feet to the east of the factory; that he did not know who these men were, and he did not see them do anything; that he never counted the number of these pickets; that he did not know where the office of the Leather Workers' Union was, but it was in the vicinity of his factory. He did not know where the meetings were held of the union and whether people congregated for the meetings. The people that were near the factory were all of the block; that Twelfth street is one of the principal thoroughfares in St. Louis and is as extensively used as any street in the city, but he saw Nora Wieland stopping an employe coming out; that he was 100 feet away at the time and saw her stop and motion with her hand, but did not hear what she said; that he did not see any violence of any kind.

On redirect examination the witness heard a number of names from the bill of complaint, some of whom he said were present doing picketing. He said thirty-two of these were doing picketing at various times.

Edward Potts (Printed Rec., p. 110; Original Rec., p. 156), an employe of the Quirk Trunk Company, stated on direct examination he was stopped by two men, Charles Morgan and Paul Berry, on Monday when the strike was declared; that he said to him to come out, that there was a strike on; that he told

them he had charge of the floor and he didn't think he was compelled to come out, and they said, "If you want to be a scab go ahead and work." The witness testified he was still working there. On cross-examination Potts admitted he was a member of the union at the time Berry spoke to him; that he only observed two pickets around the premises of Quirk Trunk Company; that these men were defendants Berry and Morgan; that Morgan said nothing. We quote the following questions and answers from the cross-examination of Potts (Printed Rec., p. 112):

> "Q. You were a member of that union at that time?
>
> A. Yes, sir.
>
> Q. And Berry said to you, 'Don't you know that there is a strike on?'
>
> A. Yes, sir.
>
> Q. And that was all that occurred, was it?
>
> A. Yes, sir; that was all that took place."

On redirect examination this witness testified that he knew a boy named McCommis and that defendant Morgan stopped this boy, who was working for Quirk, and told him he had better stay out, and that Morgan went down to the house of the boy's father and told him and his mother that they had better keep him at home or he might get his head knocked off. On recross-examination this witness testified

that Morgan did not talk to McCommis when he came into his father's house, and that the remark regarding his head being knocked off was made in the course of a conversation with his father; that he had never mentioned the matter to anybody (Printed Rec., pp. 114, 115).

Herman McCommis testified that he worked at Quirk's trunk factory; that the defendant Morgan followed him to his father's house and told his father and mother that they had better keep him away or he would get his head knocked off. This witness testified on cross-examination that it was about the 17th of December that Morgan went to his father's house (the strike took place on April 10th following) (Printed Rec., pp. 116, 117, 118). The witness testified he was at work at the time of the hearing.

Arch Zilch, for the plaintiffs, testified he was superintendent of the James A. Quirk Trunk Company; that he saw Potts and McCommis and three or four girls stopped by Morgan and Berry, who told them that there was a strike on and they had better not go back to work, and the next day they all stayed home. On cross-examination this witness testified that the boys to whom Morgan and Berry spoke were members of the union (Printed Rec., pp. 121, 122).

Robert Webber, for the plaintiff, testified that a man named Dickorner, who was a polisher in the

factory of Herkert & Meisel Trunk Company, in which he was foreman, was doing picket duty and a number of the other defendants who were members of the union were doing picket duty around his factory; that Dickorner didn't interfere with anybody, but made a remark about some man working in the factory, that he would like to get his hands on him. He admitted that the man did not hear the remark (Printed Rec., p. 124).

On cross-examination the witness testified that the remark made by Dickorner was the only incident of violence that he had observed during the strike, and that he had frequently come out to the street to see if any violence was offered to the employes. Webber testified further to having made an affidavit filed in the case which contained the statement that a large number of men had congregated around the factory during the strike who had endeavored to frighten and intimidate the would-be employes of the company by threats, force of numbers and grimaces, but that he knew nothing of this to his own knowledge, but he made the statement on account of one woman who worked there and told the pickets had threatened her; that he never saw anyone making grimaces or faces at anybody going to work or coming from work at his factory (Printed Rec., pp. 124-129).

On redirect examination witness testified that the attitude of the strikers who were picketing the fac-

tory resulted in tying it up so that the company was unable to fill its interstate orders (Printed Rec., p. 129).

Olive Ruby, for the plaintiffs, testified she worked at the factory of the Herkert & Meisel Trunk Company and that a lady outside of the factory stepped up to her and said she did not want to catch her at work at the factory again; that she did not know the woman and had not met her before, and that she told her she did not want any trouble, and that she stayed home for a week, after which she returned to work (Printed Rec., p. 131).

On cross-examination this witness testified that the woman said there was a strike on and she should not go back to the factory again; that somebody had called her a scab; that a lady and gentleman passing by the factory said she was going to beat our ears off. She stated that outside of the woman who had laid her hands on her shoulder, there was nobody touched her. She admitted making an affidavit that, commencing about the 24th of April, she was violently assaulted and called indecent names by a number of persons who were doing picket duty around the factory, but that nobody had assaulted her, and that she had gone back to work at the factory (Printed Rec., pp. 131-134).

Dorothy Lewis, for the plaintiff, testified she worked at the Herkert & Meisel Trunk Company, and that she met a woman at the corner of Thirteenth and Market streets who told her she should not work there, and if she did she was going to take her out and give her a good beating, and that she told her she mustn't scab, and that she had met another woman and challenged her to fight, and she said she didn't want to fight; that she was spoken to by a man who called her an indecent name (Printed Rec., pp. 135 and 136).

This witness, on cross-examination, said she was hired after the strike; that she was not a member of the union; that she knew none of the parties that spoke to her, and that she was not bothered at the factory, and continued to work there (Printed Rec., pp. 137 to 139).

Joe Russell, for the plaintiff, said he met a man named Stinson at Twelfth and Chouteau avenue—a block away from the P. C. Murphy Trunk Company's factory, where he worked, who called him a scab. On cross-examination he said he did not know whether or not Stinson was a member of the union, but that he went out on strike (Printed Rec., p. 142).

James Lawrence, for the plaintiff, said he worked for P. C. Murphy and was stopped by four men, who

told him he would get what was coming to him, and used a curse word.

On cross-examination witness said he met the men a block away from the factory, and did not know any of their names (Printed Rec., pp. 143 and 144).

Chester Thompson, for the plaintiff, said he worked for the Murphy Trunk Company; he said he met some people who were doing picket duty, and they said that eight hundred were coming down there and would beat something out of him.

On cross-examination the witness said he did not know the men, or whether they were members of the union. He said they were boys of fifteen or sixteen (Printed Rec., pp. 145 and 146).

Annie Bradley, for the plaintiff, said she worked at the Murphy plant, and was stopped by three men and one of them asked her if she did not know that there was a strike on, and she told him she did, and he cursed her about working there.

On cross-examination the witness said she did not know the men or whether they were members of the Leather Workers' Union (Printed Rec., pp. 146, 147 and 148).

Dewinis Chocalas, for the plaintiff, said he worked for Herkert & Meisel and met some men who told him to get off the work and not to come back any more.

On cross-examination the witness stated he did not know any of the men who spoke to him; that they had told him there was a strike on, and he should quit (Printed Rec., pp. 150 and 151). He said he did not know any of the men who spoke to him, or whether they were members of the union; that he had been continuously working since the strike; that outside of the two occasions he had mentioned nobody spoke to him, and he was not interfered with as he went and came from work; that the men had told him there was a strike on and that was all.

Al Birkenmeier (Printed Rec., p. 152), for the plaintiff, said he was the business agent of Local 66 of the United Leather Workers' Local Union; that the local conducts all strikes; that he personally had nothing to do with the conduct of the strike which was being conducted by the executive board and committees; that the international had nothing to do with local strikes; that he knew John Stinson, and he was a member of the local; that the committee in charge of the strike was Ehlenberg, Kaysing Smith, and Burns and Walmen; that the picketing was voluntary on the part of those who participated in it; that they didn't expect any more than two men for each shop, or three; that he didn't know how many men were picketing during this strike, for the reason it had nothing to do with him, he did not pay

the pickets. Shown a list of names, and said, with the exception of two, Sanders and Rehan, they were members of the union.

On cross-examination this witness testified that ninety-nine per cent of the trunk makers that walked out at the time of the strike were members of the Local Union; that the contract of the plaintiffs with these men had expired; that there were some negotiations carried on between the representatives of the employes and the employers and they failed to reach an agreement; that after the failure to agree a vote was taken by the members of the union in the regular way and in accordance with the rules of the organization and the vote was carried by a majority deciding to strike; that the instructions given to the pickets were to stay away from all trouble, and not to resort to any violence; that the witness had nothing to do with instructing the men on strike.

Birkenmeir was recalled by the plaintiffs and examined relative to the financial condition of the union and the defendants. He testified it had two thousand dollars and none of the defendants would be good for a judgment of twenty or thirty thousand dollars.

John A. Meisel. That he was president of the Herkert & Meisel Co.; that the corporation had done a business of nearly a million dollars during

the year; that it shipped its goods all over the United States and Canada. The witness was asked the following questions and made the following answers:

"Q. Could you give the Court, approximately, the amount of your loss? I don't mean to the dollar at all——

A. Since then up to the present time?

Q. Yes; by reason of the fact that you were not allowed to ship in interstate commerce?

Mr. Leahy: That is objected to for this reason; that there is no evidence up to the present that there was any attempt on the part of these defendants to prevent interstate shipments whatever. On the contrary, the evidence shows directly the opposite to that.

The Court: I will hear it and determine it for you later; I overrule the objection for the present.

Exceptions to the ruling of the Court were duly saved.

Q. What happened to prevent you from shipping your goods in interstate commerce?

A. The men going out on strike.

Mr. Leahy: I move that answer be stricken out. The men had a just right to go out on a strike. They had a perfect right to go out.

Mr. Holland: That is admitted, but there is evidence here——

Mr. Leahy: One moment. They are not responsible for any loss that might arise from any action taken by them which was perfectly legal;

they are only responsible for such loss as was caused by any illegal conduct—if their conduct was illegal, and that is a condition precedent to the fastening of liability upon them for what might have ensued. Suppose these men left the factory and injury ensued as a result of that; they wouldn't be responsible for any of these injuries.

The Court: Yes, in the main that is absolutely true. The plaintiffs here cannot charge up against the defendants any loss even in interstate commerce which accrued from the mere fact that the men quit and went out and as a consequence thereof they were unable to get other men to take their places; unable to fill their interstate orders, or to make goods, rather, with which to fill these orders and therefore a loss ensued. Any loss arising from these things cannot be charged up against the defendants in this case. Whether the two things cannot be tied together by the presence of a conspiracy (if I should find there was one) is wholly a different question. That is the only theory on which evidence of this kind is admissible. Other things being equal, in short, the defendants here cannot be charged up with any loss which occurred merely from the fact that they quit, and that by reason of their quitting the plaintiffs did not have enough hands to make the goods to fill their interstate orders. There may be something left in the case, of course, upon the question of conspiracy. I will look into that question for you. The men had a right to

strike with or without excuse. I will admit it now with the thought that I have stated in my mind."

Some further questions were asked the witness relative to advertising for help, which the witness said they couldn't get, because they were kept out by the pickets. The objection to this was sustained on the ground that it called for a conclusion. He also stated he could get men enough to stay in and operate his factories.

This witness' testimony, direct testimony, will be found at pages 162 to 166, inclusive, of the printed record.

On cross-examination Mr. Meisel testified that he went to the factory every day; that he never saw outside or in any part of the factory any violence, only that the men were stopped; that he was never stopped himself; that he saw some persons stopped, but did not hear what the parties that stopped them said; that all the men—he understood that quit—were members of the local union; that they were under no contract to work for his company—the contract having expired.

"Q. And it was because of the failure of the negotiations which you and the other trunk makers associated with you in your combination had with the United Leather Workers that this strike occurred?

Mr. Holland: I will object to that; that is not the issue; it does not traverse any allegations in the main bill at all as to what these people did.

The Court: Yes; I don't care why they quit. All I am interested in is what they did after they quit.

Mr. Leahy: Then, we will arrive at this conclusion: That these men were justified in quitting and going out on strike. I am satisfied with that admission from Mr. Holland and I will not proceed.

Mr. Holland: We are not trying to enjoin them from being on a strike; they had that right.

Mr. Leahy (Q.): Now, to your knowledge, Mr. Meisel, there was no active interference of any kind on the part of any of these strikers with the shipping of your goods in interstate commerce, as far as you know?

A. Only to stop the people as they were trying to enter our factory to go to work.

Q. That is all. Whatever occurred there occurred at the factory itself and not outside of it?

A. Outside of the building.

Q. Well, outside of the building, say, but there was no interference with the delivery of freight to the depot or any other place where freight is usually received for interstate shipment?

A. Not that I know of" (pages 166 to 168, inclusive, printed record).

James A. Quirk, for the plaintiffs, testified that he was president of the James A. Quirk Trunk Company. The investment of his company was $50,000;

that his loss since the strike was twelve or fifteen thousand dollars; that he saw two men named Berry and Morgan picketing his place and didn't know anything of their financial circumstances (168 and 169, printed record).

On cross-examination Mr. Quirk said he visited the factories two or three times a week; that he never saw any of his employes being interfered with.

On redirect examination the witness stated that the manufacturer of his goods to be shipped in interstate commerce was interfered with (same page).

Harry A. Kolb, for the plaintiff (page 170, printed record), said he was president of the H. A. Kolb Trunk & Case Co.; that his factory was picketed after the strike; that he knew two of the pickets, Teuschert, Peters; that they could not get any help; the money value of orders that he had for shipment in interstate commerce was between five and six thousand dollars; that his loss was four or five thousand dollars.

On cross-examination (pages 172, 173 and 174, printed record), Mr. Kolb stated that he understood all the leather workers in his employ were members of the local; that he attended his factory every day and was there most of the time; that he was not interfered with, nor had he seen any other person interfered with in going or coming to his factory; that he had gone out frequently in front of his building

during the strike to make observations and had seen nobody interfered with. That he did not know of any of his men or wagons engaged in conveying freight or his manufactured goods or output to the freight depots or trains being interfered with.

H. M. Wilson, for plaintiffs (page 174, printed record), said he was president of the Stability Leather Goods Manufacturing Company; that his men quit and he couldn't get any more; that they stood around the street and seemed to be talking matters over about a block from the factory, one and two and three in groups; that he saw Deschant, Wilhelm and Kuntz, and that he never saw more than three at a time; that he had no direct knowledge of whether they interfered with anybody; that his investment was over thirty thousand dollars; that he had orders amounting to over thirty-three thousand dollars for interstate shipment.

The objection to this latter testimony was overruled by the Court, the Court intimating he would consider the question of loss in connection with the orders received.

On cross-examination Mr. Wilson testified that all the men that left his employment were members of the local union, that he visited his factory every day, spending eight or nine hours there; that he

never was interfered with or saw anybody interfered with.

"Q. Have any of your wagons or drivers been interfered with by these defendants in conveying your manufactured articles to the freight depots or other places?

A. No.

Q. So, as far as that aspect of the case is concerned, there has been no active interference with the delivery of your goods outside of the fact that these men have quit their work?

A. No.

Q. I mean the delivery of your goods, to freight depots or for interstate commerce?

A. No, sir (Printed Rec., p. 178.)"

By Mr. Holland:

"Q. When you say that there was interference with your business, you mean there was interference with the manufacture of your goods to be shipped in interstate commerce?

A. Yes."

On cross-examination, this witness testified that he did not recall the exact time that the contract with the employes and members of the Union had expired. Asked if it was not the fact that the employes of the corporation who were members of the

Local Union offered to continue work under the same contract which they had signed for the previous year:

> "Mr. Holland: That is objected to.
> The Court: **I shall sustain that objection. I will assume that they had the best reasons for quitting.**"

Clara Grimm (Printed Rec., p. 179), witness for the plaintiffs, testified she worked at the Stability Leather Goods Company; that she was spoken to by Steve Wilhelm and John Bosh (not defendants herein); that she met them when she was coming from work at Fourth and Chouteau; that they asked her from where she was coming, and she said from work, and she had been working at the Stability Leather Goods Company; then they said that she should think it over; that her boss would think the same thing of her if she would leave him the same way some day. They asked her if the strike was over, and she said she didn't know; that they advised her to go up to Mr. Birkenmeier's office and see if the strike was over.

The witness, on cross-examination, testified that she was not interfered with.

Amanda Berger, for the plaintiffs (Printed Rec., p. 182), testified that she worked for the Stability Leather Goods Company; that Ambrose Kuntz, Stephen Wilhelm and John Bush (for the defendants)

stopped her and asked her if she was going to work, and she said no, and they said they did not think that she would go back and put disgrace upon her children. That conversation was about one block from the factory. That they told her if she went back to work they would have those who went back to work kicked out.

On cross-examination (Printed Rec., p. 184), the witness testified that she was a member of the Local Union and was present at the meeting when the strike vote was taken, and agreed to go out with the rest. That the men who spoke to her said she was violating the laws of the organization, and that was the substance of the conversation with them; and that she continued to work and was not interfered with in any way.

On further cross-examination this witness (Printed Rec., p. 186) said the statement made in her direct examination that the three men said she would disgrace her children was wrong, and only Mr. Kuntz had made that statement.

Frances Hardy, for the plaintiffs (Printed Rec., p. 187), testified she was employed at the Murphy Trunk Company, and she was stopped by three men at Twelfth and Chouteau avenue, but she did not know any of them; that they asked her if she was working at Murphy's, and she told them yes; and

they said she was scabbing and would fix me on Saturday night; they would take my money——

> "Mr. Leahy: I object to this testimony for the reason that it is not shown that these defendants had anything whatever to do with the stopping of this boy. The names are not given. We don't know whether they belonged to this Local or not. As far as we know now, these men were absolute strangers and the defendants should not have to shoulder the responsibility of any statement made by an outsider."

The Court will hear it and determine it later.

The witness further testified that she noticed three men around close to the factory; that on May 27th she met another man at Thirteenth and Chestnut streets who asked her if she was going down to Murphy's to get work, and she told him she was looking for work there and was going home because she was sick, and he said he did not want me around any longer, as I was scabbing, and then he said, "These sons of b—— up there all think it is an open shop."

On cross-examination Hardy testified (Printed Rec., p. 190) that he was a member of the local union, and went to work at the factory May 17th; that he did not know the men who spoke to him; that they were absolute strangers to him.

Forest Easley (Printed Rec., p. 192) said he was employed at the Murphy Trunk Company; that he met a man on Papin street, between Thirteenth and Fourteenth streets, who asked him if he knew there was a strike on; he told him that we are going to have a meeting Friday; we are going to know you guys' roof in Friday. He met this man about 450 feet from the factory. The witness further testified that he met two fellows on the street car when he was coming back from work, and they asked him if he knew there was a strike on; and then he saw these men outside the engine room and one of them was the defendant Colley. On cross-examination the witness testified (Printed Rec., p. 194) that he had never seen any of the three men since they had spoken to him. On redirect examination (Printed Rec., p. 195) the witness said he noticed a number of men at Thirteenth and Chouteau who stood there at the time; there were about twenty-five to thirty men in the crowd.

Recross-examination (Printed Rec., p. 195): The witness testified there was a lodge hall at Thirteenth and Chouteau where this crowd was assembled and the Yardmen's Association met there, and lots of people frequented the place.

Henry Kelly (Printed Rec., p. 197), for the plaintiff, testified he was employed at Murphy's and there

was a man at the corner by a saloon about one block from Murphy's factory, who asked him if he was working at Murphy's; he asked if I knew the place was on a strike, and told him that the gang around there was liable to beat hell out of him; that while he passed by a saloon at Thirteenth and Chouteau he was stopped by a man at the saloon door and told him to beat it; he asked him if he was working at Murphy's, and said, "Why don't you give us poor fellows a chance?" He said, "You have a chance, why don't you do it?"

On cross-examination this witness testified that he did not know any of the men that stopped him; and he never seen him doing picket duty; and that he didn't know if he belonged the local union.

Alexander Dodd (Printed Rec., p. 200) testified that he was a salesman for the Herkert & Meisel Trunk Co., and that he saw a great many strikers standing around the factory at Thirteenth and Chestnut, and that he had seen one woman doing picket duty; and that she was promenading with two other men. The lady saw another man and himself coming out—the man did not see them and she touched him on the arm and said, "Those two fellows came out of there," and he turned around and said, "You bastard, come out of there"; that he referred to the * * * he supposed; that he had counted 23 pickets around the Herkert & Meisel Co.

On cross-examination (Printed Rec., p. 202), Dodd said he did remember that he saw the 23 men; that they were standing at Thirteenth and Chestnut and that the factory was located at Thirteenth, running up to an alley; that there were three men at the corner of Thirteenth and Chestnut streets; there were four groups of four men each and one group of three. He never saw anybody interfered with himself.

Martin Nolan, for the plaintiff (Printed Rec., p. 204), said he worked for the Murphy Trunk Company, and was stopped at Thirteenth and Chouteau by a man who asked if he knew a strike was on, and he told him it was kind of bad to work there, as he might get hurt; and that he was stopped about the middle of the block by two men who told him the same thing.

On cross-examination (pages 205-206) the witness testified that he had never seen the men who stopped him before, and that he never seen them doing picket duty, and the men had simply said to her that he was liable to get hurt if he worked in the factory.

This was the entire testimony offered for the plaintiffs.

Herman Ehlenbeck, for the defendants (Printed Rec., p. 208), testified he worked for the P. C. Murphy Trunk Company, and had been working there for three years; that a strike vote was taken on the 10th

of April; that he left the employ, and all the men who left with him on the strike were members of the local union, or lodge No. 66 of the United Leather Workers' International Union No. 66; that all the members were notified to be present at the meeting when the strike was declared; that he was chairman of the executive board of the local; that this committee examined the action of the organization and active as adviser to the organization; and that they were voted to act in conjunction with the committee; that neither he, or did any members of the committee, knew of any act of physical violence or any threats made by anyone of the local organization; that the nature of the instructions were at all times to stay away from violence, but if they thought they could use peaceful persuasion, why, they were at liberty to do so; that he never heard of any violence used in the strike.

On cross-examination (Printed Rec., p. 210) the witness testified that he, Kaysing and John Smith (who had recently died) composed the three men of the local strike; that he had charge of the strike. He further stated that there were no pickets appointed by the organization; that he did not visit the factory of the plaintiffs, but was near the Murphy factory, because the headquarters were at Thirteenth and Chouteau avenue; that no pickets were paid; that the organization paid a strike benefit; that he saw men standing at the corner of Twelfth and Chouteau

avenue after the meeting; that there was a saloon there; and that it was one block from the Murphy factory; that it was the business headquarters of the local, around the Herkert & Meisel's factory; that no reports were made to him relative to any picketing; that he had passed by the factory of the Herkert & Meisel Trunk Company, but had never seen any of the members around, and did not know if it was picketed.

On redirect examination the witness testified that members of the organization congregated at Tenth and Chestnut streets after meetings, and that in going from the hall at Chestnut street to the headquarters they would have to pass by the factory of Murphy's. The headquarters were at Thirteenth and Chouteau avenue; that a number of men congregated at Thirteenth and Chouteau, outside of the meeting hall and the saloon at the opposite corner, and that about one block from the P. C. Murphy Trunk Company.

Charles Kaysing, for the defendants (Printed Rec., p. 213) said he was employed by the P. C. Murphy Trunk Company, and was and is a member of the United Leather Workers' International Union, and was also a member of the executive board; that there was never any action taken with reference to the picketing of establishments; that during the intervals of the strike he was acting as chairman, and ——

of those who did volunteer picket duty were instructed by him to stay away from violence of any kind; that he was around the factory; he never saw or heard of any violence offered to any during the strike; the only violence that he knew of is that his desk was broken open, and a desk broken open and searched; that there was a sum of $125.00 in the desk that was not taken.

On cross-examination (Printed Rec., p. 217) Mr. Kaysing said the names of the men who volunteered for picketing duty he could not mention, but there was a man named Colley, who was replaced by Thomas Halliburton. At P. C. Murphy's there was L. Berg, Nic Paul, and later on Harry Laskowitz. At the Stability Company there was Ambrose Kuntz, and there was one instance where a woman volunteered, he did not remember her name. He saw her present at court, and stated her name was Esther Bradley. Nora Wielandy was also present at the meeting. Mr. Birkenmeier was not a member of the executive committee. **Previous to the strike they had a committee appointed that had been negotiating with the firms regarding a settlement. This committee was to act in conjunction with the executive board in handling the strike, and that idea was in existence, there being seven members.** Originally he testified that Otto Kaufman picketed at Herkert & Meisel, and that Birkenmeier did not picket. He

didn't know if Charles Morgan or Paul Berry were members of the organization, and that Ambrose Kuntz was picketing. He did not know Wilhelm to volunteer. Kuntz was in charge of the Stability. Kaufman was in charge of Herkert & Meisel, and nobody in charge of Quirck; Leonard Burg in charge of Murphy's; for the past three weeks they had no pickets; that he did not know Walter Dechant, J. Perry, John Remstedt, Charles Ruben, Henry Schnitze, Theodore Summers or Charles Tadesco.

The witness further testified relative to various names mentioned to him as pickets, who he did not know; that reports were received once in a while in regard to what happened at the various factories; that he was every day in the vicinity of P. C. Murphy's factory, but not in the picket line.

On redirect examination the witness testified (Printed Rec., p. 225) that Schilling was vice-president and general organizer of the International Union; that his health was very bad, and was present when the strike vote was called at the meeting, but had taken no further interest; that as picket chairman he instructed the pickets to stay away from violence and threats or abuse of any kind. He told them it would hurt their cause more than it would do it good.

A. M. Reuter, for the defendants (Printed Rec., p. 226), testified he was chairman of Local No. 66, and

held that office, and presided at the time the strike vote was taken; that instructions were given to the volunteers for picket duty—was to not cause any trouble, and to go about everything as peacefully as they could.

This witness testified he never spoke to any of the employes with reference to their leaving their employment; that he never entered into any sort of combination with anybody to injure the business of plaintiffs; that meetings were held at Thirteenth and Chouteau, and the men and women remained outside and congregated and discussed matters over amongst themselves.

On cross-examination the witness testified (Printed Rec., p. 228) that meetings were held at noon; that he knew Kuntz and Rehan, but never ran across them on the picket line; that he was not in charge of the picket line; that there were about 550 or 600 present at the meeting when the strike vote was taken; that he asked for volunteers to do picket duty, and several offered, including L. Berg; that he gave general instructions to the members with reference to their conduct during the strike.

On redirect examination (Printed Rec., p. 231) the witness testified that several unions met at Chouteau and Thirteenth street and congregated around there after their meetings.

Michael Litke (Printed Rec., p. 232) testified he was a member of the local union; held no official position, but was just acting as a committeeman during the strike; never heard of any violence or threats of any kind being resorted to by any of the members of the organization; that the Switchman's Union and Bakers and Garment Workers meet at this hall. On cross-examination this witness testified that he was always in the neighborhood of Thirteenth and Chouteau avenue from three to five hours every day during the strike; that he was never captain of the picket line, but did not know if anybody going or coming from work at Murphy's was interfered with; that nobody brought any information to Mr. Litke that pickets had been breaking the law.

John Stetson, for the defendants (Printed Rec., p. 236), said he was a member of the Local Union when the strike was called; heard the officers instruct the men not to use any violence, or anything like that; to be peaceable, at the meetings; said he had trouble with a man named Russell one year previous to the strike; that he had seen him on Chouteau avenue and never tried to intimidate him; when he saw Russell on Chouteau avenue he appeared to be drunk, and Russell was a drinking man; that they had to fire him every three or four weeks because they could not depend upon him; he was drunk; that he had

never entered into any combination with anyone to disturb the business of the plaintiffs. On cross-examination this witness testified that Russell was an habitual drunkard; that he had worked side by side with him; that he was in the Justice's office at Twelfth and Chouteau and saw Russell getting off the car and saw him stagger, that directed by attention to him—there were three or four other people and he was chewing the rag and acting like a fool. He was across the street from where he was; that he had never called Russell a scab and did not use that kind of language. On redirect examination (Printed Rec., p. 234), he further testified that he did not threaten to go down to his house as it would not be safe to go down there.

Malley Colley (Printed Rec., p. 234), for the defendant, testified that he was a member of the local union and one of the parties that were out on the strike; that he was down at Herkert and Meisel Company plant for one hour in the morning; that he was there about three weeks altogether; that there was never more than six at one time down there and three of these men walked up and down and were standing at Twelfth street, one block away from the building.

Witness further testified that some outsiders were demonstrating every day; that they were not mem-

bers and he never tried to intimidate them; that he never did anything to anybody, outside of one time he spoke to a striker and he said to him, "Are you working at Murphy's?" Was coming over the bridge and he got in the same car which he got on. He says, "Yes; I found out today; I wanted my money, but Leo Murphy wouldn't give me my money, but I want to quit." He never used vile language towards anyone going or coming out of that factory; he did not threaten or intimidate anyone. On cross-examination witness was asked with reference to some men doing picket duty and he mentioned Henry Schnitze, Robert Webber, Ray Watke; he did not know Charles Morgan or Paul Berry (Printed Rec., p. 247); that John Zimmerman, Frank Kato, Sylvester Schnitze did picket duty.

Paul Berry, for the defendant (Printed Rec., p. 250), said he was a member of the union and left on strike with the rest of the members, and he went down to the store that evening and waited for some men to come out and notified them the strike was on, and that they had told him before that if they go out on a strike to come down and let them know, so he went down to Quirk's factory and told some of the men they had gone out on the strike; that he went around every morning and evening and never used any vile language towards anyone and that he never

saw anyone else do it; that he met McCommis coming out of the store and told him that they were going out on a strike and asked him what he was going to do. He went back to work and he never said he would break his head or anything of that kind; that he merely went up there to notify them that they were going out on a strike; that Morgan was with him at the time; that he and Morgan went home after they spoke to him and never went to the home of this boy; that he was never in this boy's home at any time and did not know where he lived; he never saw anybody interfered with coming and going out of the factory and never interfered with anybody. On cross-examination he said he did not know where Morgan lived and did not know where he went that day; and he did not think McCommas belonged to the Union. Examined by the Court (Printed Rec., p. 253), said he did not go to the home of this boy McCommas and have a conversation with him in the presence of his father and mother; and he did not know whether Morgan went there or not, he was with him down at the factory, but he was not with him later.

Charles Morgan (Printed Rec., p. 254), for the defendant, testified that he was working at Quirk Trunk Company and was a member of the local union, and that he and Berry went over to notify the members of the union at the factory of the strike; he was along about three times; that he never used

any vile or threatening language to anybody; that he met Herman McCommas at Twelfth and Pine, about one and one-half blocks from the factory; that they walked down the street together, down by his house, and stopped and told his mother about it, and she said that she wouldn't let the boy go back. On cross-examination (Printed Rec., p. 256) this witness testified he had known McCommas about one month, but Berry did not come with him to the house, but McCommas was not a member of the union; that he volunteered to go to Quirk's to do picket duty himself, but he merely told the people that there was a strike on.

Examined by the Court (Printed Rec., p. 258), witness stated he told McCommas' mother there was a strike there and to use her own judgment, and she said she would not let him work, and he didn't tell his mother that he had better stay away from there or somebody would knock his head off.

Ambrose Kuntz (Printed Rec., p. 260) testified for the defendant he was a member of the local union and that he did work at the Stability Leather Manufacturing Company, and he was down there once or twice a week and stayed for about one and one-half hours; he never heard of anybody called a vile name or attempt to prevent anybody from going or coming out of work, and that he had spoken to Amanda

Berger, who was a member of the local union, and he asked her if she got a letter to go back to work, and she said she had not and she ain't a scab like Clara Grim is; she is in there scabbing, and that he never used that word to her or to anybody else; that he never told Mrs. Berger she should not disgrace her children and she said she would not be like that to go and disgrace her children and to be a scab like Clara Grimm. On cross-examination witness testified (Printed Rec., p. 262) that he had known Amanda Berger for about three months; she and her sister were coming from the Stability Leather Company; that he and two others walked with her from the shop; that they talked to a few of the men; that they walked up and talked to them as soon as he saw them coming out of the factory; that he went with them from Chouteau avenue to Market street; that there was a couple of men who came down for an hour at a time; Wilhelm and Bosch and Deschant were their names, and all he saw during all that trouble were yourself and Deschant and Wilhelm and Bosch. He did not hear any conversation between Wilhelm and those girls in question.

Steve Wilhelm (Printed Rec., p. 265), for the defendants, testified he worked at the Stability Leather Manufacturing Company and was a member of the local union, and he went down to the factory after

the strike and was there two times and stayed about one and one-half hours in the morning and about that long in the afternoon, and that he was alone; that he met two women coming out of the factory with Bosch and Kuntz about two blocks from there; that when they came up to the girls and said, "Hello" and they asked her what she was doing, she said she went to the Stability Company to get a bundle, and we asked her if she was going to work; she said she would not go back and be a scab like Clara Grimm. He never called her a scab; that he had told her to go up there to see Mr. Birkenmier's office and get some information about the strike, and he had never used any violence to anybody or saw anybody else do it. On cross-examination (Printed Rec., p. 279) the witness testified that there was nobody going to work around the factory, and he saw Kuntz and Bosch there, and he saw this girl on her way home, but did not know she was working until Mrs. Berger told him the afternoon before he met the girl that she was working; they met the girls coming out of the factory and walked up to them and they walked along with them until they got to Market street.

Nora Wielandy testified for the defendants (Printed Rec., p. 271) she was a member of the union, working at Herkert & Meisel's; never did picket duty, and never went back after she quit. On cross-examina-

tion the witness testified (Printed Rec., p. 272) that one day she went to get her voucher cashed at 1007 Chestnut street, and after she did so Mr. Webber walked with her.

Esther Bradley (Printed Rec., p. 273) testified that she worked at Herkert & Meisel's and left on the 10th of April with the rest of the strikers, but she went back to the vicinity of the premises on one morning with Philip Deering, and she was there two times in all, and she had never tried to intimidate anybody or heard any threats made. On cross-examination (Printed Rec., p. 274) she said she attended the meeting at Chouteau avenue; she was never there when there was a large amount of picketing going on.

Herman Dieckhorner (Printed Rec., p. 275) said he was working at Herkert & Meisel's, and was a member of the local union; that he never volunteered for picket duty, and passed by the place about two weeks after the strike, and saw Mr. Mees, and Mr. Mees "did wave his hand at me and asked if I didn't want to work there."

Cross-examined, said the time he spoke to Mr. Mees was the only time he was around the factory; he attended four or five meetings, and he had heard no instructions issued to pickets.

Thomas Halliburton (Printed Rec., p. 277), for the defendants: That he was a member of Local Union and employed at Herbert & Meisel's factory, and left the same day as the rest; that he was down at the plant about one-half dozen days after the strike was declared; that there was never no more than six of the members there on any occasion; that coming from the meeting of the Leather Workers over Twelfth street that he knew of only two of them being present; he never tried to stop anyone that was going in or coming out of that factory. On one occasion there was two fellows that came by there, and asked them if they were going to work in there, and they said no; they told them there was a strike on there, and they said if that was the case they wouldn't work in there, anyway (Printed Rec., p. 278).

On cross-examination he said that Malley Colley was one of the pickets before he got there; that his intention was to notify anybody that was going in there; if there should happen to be a member of the organization they wouldn't like to go into a place of that kind and work. He said he told two men that there was a strike on there, and the largest number they ever had was six. Four or five men stopped at the corner in passing up Twelfth street. That he had never seen any girls interfered with in any way coming out of the factory.

On redirect examination (Printed Rec., p. 283), the witness testified that there were six men with him that were at the time they were coming from the hall on Chouteau avenue; that at other times referred to one or two, or possibly three, around the factory.

Annie Stocker (Printed Rec., p. 285; Original Rec., p. 426), for the defendants, testified that she worked at the Herkert & Meisel Trunk Company and was a member of the Local Union of Leather Workers while she was so working; that she quit with the rest; that she never used bad language to anybody, never prevented anybody from working for Heckert & Meisel Company, or tried to injure them in their business, and never did picket duty; that she passed by the place on her way from the meeting hall one evening, and did not stop nor loiter there; didn't talk to anybody, nor see anyone of her fellow members talking to any persons coming in or going out of the plant.

On cross-examination (Printed Rec., p. 286) this witness said that she attended the meetings frequently; that her purpose in passing Thirteenth and Chestnut streets was that she was going home; that she was at the meeting when the strike vote was called; that nothing was said about the pickets at that meeting, until about three weeks afterwards, and that she couldn't tell who spoke about pickets.

Walter Deschant, one of the defendants herein (Printed Rec., p. 287), stated he worked at the Stability Leather Goods Manufacturing Company; that he was a member of the Local Union of Leather Workers at the time; that he quit the employment of the Stability Company with the rest; that he was in the vicinity of their premises one time; that he never tried to prevent anybody from going in or coming out of the place, and didn't use any threats; that he never entered into a conspiracy with anybody to injure the complainants' business.

On cross-examination (Printed Rec., p. 288), the witness stated he volunteered to do picket duty; that the captain was Mr. Kuntz; that the only instructions he received was not to molest anyone, or speak to anyone; that if he saw anyone going in there just to notify the captain, that was all; that nobody went in or came out of the factory while he was there.

Robert Ginner (Printed Rec., p. 290; Original Rec., p. 434) for the defendant, testified he worked previous to the strike at Herkert & Meisel Trunk Company, and left after it was declared. That he went down once to the plant of the company when he was coming from the meeting hall, and two men came out, and he stopped them on Twelfth and Chestnut streets. As they came up, he asked them if they knew there was a strike on there. They said "No,"

and asked what departments. He said, "All departments." They said that they didn't know that and would keep out of there thereafter. That nobody was with him at that time; that he just happened to be passing along; that the instructions given to members of the organization of the Union by the officials was to conduct themselves peacefully.

On cross-examination, witness testified (Printed Rec., p. 291) that he never volunteered to do any picket duty; that he didn't know at the time he spoke to the men if they belonged to Local 66.

Henry Schnitze, a defendant (Printed Rec., p. 292), stated he was a member of local union of the Leather Workers and worked at the Herkert & Meisel Trunk Company; that he went there one day after he had quit, about three weeks after the strike, and stayed there about an hour and a half. That he met one man and he asked him where he was going, and he said he was going there to tell the boss that he was going to quit; that he didn't want to work while there was a strike on; that he spoke to one man who said he was out of work, and he told him that was all right; he could get a better job; that he never tried to intimidate anybody, to interfere with anybody coming in or going out of the factory; that he never entered into a conspiracy to destroy the interstate business of his former em-

Murphy Trunk Company and was a member of the committee that met the bosses; that he heard statements made by the chairman at the various meetings of the union, notifying the members not to be guilty of any violent conduct during the strike.

On cross-examination (page 302), the witness testified that he never was on the picket line; that he heard reports of conditions that prevailed in the shop from the pickets; that three pickets were assigned to each captain and one captain to each place; that he saw Burg at P. C. Murphy's after the 10th of April, and that he didn't know how many pickets were maintained after the Court's order.

On redirect examination, the witness testified that Burg had left the city.

At this point, counsel for the defendants stated that they were in a quandary as to statements alleged to have been made by some persons to some of the plaintiffs' witnesses, and that the only way that these statements could be combated because of the fact that the witnesses were unable to identify the persons that made them, would be by calling every member of the organization to testify that he never used the particular language. The Court intimated that he understood that there were eight hundred and fifty members, and he didn't want to sit and hear their testimony. No offer of proof was made, the Court ruling that it would be necessary to bring all the members in or none.

George Wenk, a defendant (Printed Rec., p. 305; Original Rec., p. 458), stated he worked for Herkert & Meisel Trunk Company, and left the employment at the time of the strike, and that the only occasion that he returned was to get some money that was coming to him; that he never intimidated anybody, or never knew of anybody that was intimidated in the employ of the complainants.

On cross-examination (page 306), the witness testified that he was present at a meeting of the union when the strike vote was taken; that he volunteered for picket duty, but that he didn't do it.

Al Birkenmeier, recalled (Printed Rec., p. 398), testified he never saw any restraining orders published; that he never went to factory since the strike started; that they met in a hall one block from P. C. Murphy's factory.

On cross-examination witness testified that he did not know whether any of the men picketed since the Court issued the restraining order. The witness further testified that he had not heard of any of the men having done anything against the law, and if they had they would have been arrested.

POINTS AND AUTHORITIES.

I.

Neither of the parties being aliens and citizens of the United States or citizens of different states, this Court has jurisdiction to hear the appeal of the defendants.

Judicial Code, Section 128, as amended Act of January 28, 1915, Chap. 22, and as amended Act of July 17, 1916;
Hugeley Mfg. Co. v. Galeta Cotton Mills, 184 U. S. 290.

II.

The parties to this suit being Missouri corporations upon the one side and citizens and residents of the same state on the other, the federal courts have acquired no jurisdiction over the defendants in this suit under the decision and ruling in the Coronado Coal Company case.

United Mine Workers of America v. Coronado Coal Co., 258 U. S. 42, Sup. Ct. Rep. 570.

III.

There was a failure of proof of the conspiracy as alleged in complainants' bill, and the defendants were not connected up with same.

Eddy on Combinations, Vol. I, Section 369;
Corpus Juris (Conspiracy), Vol. 2, 543;
Newell v. Jenkins, 26 Pa. 159;
United States v. Nunnemacher, 27 Fed. Cases, No. 15,902, l. c. 200.

IV.

Even if it be conceded that a conspiracy existed upon the parts of the defendants to unionize the plaintiffs' plants, such a conspiracy is not a violation of the Federal Antitrust Acts, the alleged interference relating solely to the manufacture of the goods and not to their shipment or delivery.

Kidd v. Pearson, 128 U. S. 1, 9 Sup. Ct. Rep. 6;
Heisler v. Thomas Colliery Co., 43 Sup. Ct. Rep. 83;
Champlain Realty Co. v. Town of Brattleboro, 43 Sup. Ct. Rep. 146;
Oliver Iron Mining Company v. Lord et al., 43 Sup. Ct. Rep. 526;
Gable v. Vonnegut Machinery Co., 274 Fed. 266;
Danville Local Union No. 115 v. Danville Brick Company, 283 Fed. 909.

V.

The alleged conspiracy or combination was not a direct attack on interstate commerce nor did it have such object or intention.

United States v. E. C. Knight Company, 156 U. S. 15, Sup. Ct. Rep. 249;

United Mine Workers of America v. Coronado Coal Co., 42 Sup. Ct. Rep. 570;

Gable v. Vonnegut Machinery Company, 274 Fed. 66;

Danville Local Union No. 115 v. Danville Brick Co., 283 Fed. 909.

ARGUMENT.

Honorable Circuit Judge Stone Dissents From the Majority Opinion.

The opinion of the Circuit Court of Appeals and which now in 284 Fed., page 446, was rendered by Honorable Walter H. Sanborn and concurred in by Honorable Thomas C. Munger, District Judge. There was a dissenting opinion filed by Circuit Judge Honorable Kimbrough H. Stone. We have annexed to this brief copies of majority opinion and the dissenting opinion of Circuit Judge Stone.

Evidence in the Case.

We shall not attempt to discuss in detail the evidence in the case, having regard to the importance of the jurisdictional point involved. We shall not discuss the evidence relating to the alleged charges of intimidation by the defendants in trying to interfere with persons working at the plants or to prevent them from entering them, but simply desire to call the attention of the Court to the fact that, except in one or two instances, no threats or improper language were used by any persons identified as being connected in any way with the defendants. It was ad-

mitted by the presidents and other persons managing the plants of the plaintiffs that no acts of physical violence or intimidation had come under their observation during the strike. It was further admitted that there had been no interference whatever with the delivery of the raw material to the plants or with the shipment of any manufactured articles from the plants to the freight depots.

Causes of the Strike.

It was admitted that the plaintiffs had an organization of trunk manufacturers of St. Louis at and previous to the strike. (See evidence of Francis Leo Murphy, Tr. of Rec., p. 83.) This combination of manufacturers claimed to control the entire business of manufacturing trunks and leather bags in St. Louis, as stated in their bill of complaint (Tr. of Rec., p. 7). The defendants and the other members of the United Leather Workers Union worked for these plaintiffs under a contract made between the union and the trunk makers association (Tr. of Rec., p. 55), and had entered into contracts or agreements specifying the conditions under which they worked. These contracts expired on April 1, 1920, and negotiations for a renewal of the contract were being conducted between the representatives of both organizations, resulting in a failure to agree upon the renewal

of the contract or an agreement relating to future employment, and the defendants, on the failure to agree, together with the rest of the employes engaged in the manufacture of trunks and leather goods—all of whom were members of the labor union—left the employ of the plaintiffs. This was the reason that the plaintiffs were unable to manufacture their raw material, and it was not due to any intimidation practiced or resorted to to prevent the plaintiffs from procuring other workers in their places. This will be at once apparent from the evidence of John A. Meisel, president of the plaintiff Herkert & Meisel Trunk Company, as contained in the following questions and answers:

> "Q. Have you shipped your full amount of goods, or any amount of goods, since the 10th of April, in interstate commerce?
>
> A. No, sir.
>
> Q. What happened to prevent you from shipping your goods in interstate commerce?
>
> A. The men going out on strike" (Tr. of Rec., p. 164).

Opinion of the Trial Judge.

The trial judge, Honorable C. B. Faris, of the Eastern Division of the Eastern Judicial District of Missouri, found in his opinion (Tr. of Rec., p. 46), a copy of which is appended to this brief, that the strike was called by the defendants pursuant to a vote taken

by the union and in the regular way under the rules and by-laws of the union and after a fruitless effort to agree upon wages and a contract embracing terms and conditions of future employment which seemed to have the phase of collective bargaining; that upon the calling of the strike and the failure to agree upon the new contract **practically all the employes of the plaintiffs quit their employment**; that after the calling of the strike and during the picketing, many unlawful and unpeaceful acts were committed by the pickets, such as calling the employes remaining in the employ of the plaintiffs vile and opprobrious names and instances of domiciliary visits and various other things of a like nature too numerous to mention; that these unlawful acts prevented the plaintiffs from employing other workmen to take the place of the strikers, so that they were unable to manufacture the goods necessary to fill both the interestate and **intrastate** orders which they had on hand; **that there was no actual interference with, or hindrance of, any interstate movement, or shipment of any goods made by the plaintiffs, or by either of them, for the very simple reason that the goods designed for interstate shipment had never come into existence on account of the interference mentioned**; that these goods could not be manufactured because the plaintiffs' former workmen struck and quit and other workmen could

not be obtained to manufacture them; these workmen were kept away by too numerous picketing and by threats and intimidation.

The trial judge further found that **such goods as were actually made by plaintiffs have been shipped in interstate commerce (when such was their destination) without let or hindrance.**

The trial judge further found that there was no diversity of citizenship involved in the case, and if the federal court had any jurisdiction at all it got it solely perforce the provisions of Section 1 of the so-called Sherman Anti-Trust Act (26 Stat. 209).

After citing the provisions of the Act of July 2, 1890, Chap. 647, 26 Stat. 209, and the cases of In Re Green, 52 Fed., l. c. 113; Hammer v. Dagenhart, 247 U. S., l. c. 272; Coe v. Errol, 116 U. S. 517, and Bacon v. Illinois, 227 U. S. 504, and particularly the doctrine as announced in the Hammer v. Dagenhart case, supra, the trial judge said:

> "Over interstate transportation or its incidents the regulatory power of Congress is ample, but the production of articles intended for interstate commerce is a matter of local regulation. When the commerce begins is determined, not by the character of the commodity, or by the intention of the owner to transfer it to another state for sale, but by its actual delivery to a common carrier for transportation or the actual commencement of its transfer to another state."

"This principle has been recognized often in this court (Coe v. Errol, 116 U. S. 517; Bacon v. Illinois, 227 U. S. 504, and cases cited). If it were otherwise, all manufacture intended for interstate shipment would be brought under federal control, to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the Constitution when they vested in Congress authority to regulate commerce among the states."

Kidd v. Pearson, 128 U. S. 1.

And the trial court, in its opinion touching the principles above announced, said:

"The above well-known and well-settled definition, touching when articles made in one state and intended for sale in another begin their travels towards such other state, so as to bring them within the constitutional power of Congress to regulate interstate commerce, ordinarily would be regarded as conclusive upon the courts in construing the language used in the first section of the Sherman Anti-Trust Law. **If the matter were one of first impression, in this circuit, I would feel constrained to agree with counsel for defendants, and to hold that the above well-settled definition touching when interstate commerce begins ought to be applied to that term as used in the Sherman Anti-Trust Act,** supra. But the matter is not one of first impression in this circuit. Therefore, it is my duty,

regardless of any personal views or convictions which I may hold upon the subject to defer to and follow what I am forced to consider the view taken by the Court of Appeals of the Eighth Circuit."

The trial court then quoted the case of Dowd v. United Mine Workers of America et al., 148 C. C. A. 495, l. c. 51, and following what he conceived to be the doctrine of that case, the trial judge granted the permanent injunction. This because he felt himself forced to follow the opinion of the Circuit Court of Appeals, and he concluded that because some unpeaceful and unlawful acts were committed by pickets which were not repudiated by the defendants and members of the union that, therefore, the defendants and members of the union were bound to have notice of them, although there was no direct evidence that they knew of them. This was held sufficient to establish the conspiracy which might be shown from circumstantial evidence.

The trial judge in this case was one of the ablest of the Judges of the Supreme Court of the State of Missouri before being appointed to the Federal Bench and is a most capable and painstaking trial judge. We are, however, compelled to differ with him in the statement appearing in his opinion that counsel for defendants conceded that barring the question of jurisdiction and the existence of a conspiracy, the

plaintiffs were entitled to relief by injunction for which they prayed. This misconception was probably due to the fact that, recognizing that the jurisdiction of the federal court was a big question in the case, the attention of counsel was more or less concentrated upon that point in the brief.

Majority Opinion of the Circuit Court of Appeals.

The majority opinion of the Circuit Court of Appeals for the Eighth Circuit (which for the sake of brevity we may designate the majority opinion as it will appear in this argument), after quoting Section 1 of the Sherman Anti-Trust Act, states that:

> "The complaint of the decree is that the evidence is insufficient to sustain it because, although it conclusively established the facts that the defendants conspired to and did by unlawful means, such as too many pickets, assaults, threats and intimidation of employes and those seeking employment of the plaintiffs, restrain and stop the theretofore continuous stream of the plaintiffs' interstate commerce, and prevent the plaintiffs' performance of their interstate commerce contracts of sale, they did this by preventing the plaintiffs from manufacturing the articles they had contracted to sell, make and deliver in interstate commerce and because the defendants stopped the flow of this interstate commerce in this way for the purpose of compelling the plaintiffs to employ union men only and to comply with other demands of the defendants."

This is, we respectfully submit, founded upon an entire misconception of the defense made by these defendants under the pleading and the proof. The defendants deny and it was not conclusively proved against them that they ever entered into a conspiracy for that purpose, or ever sought to, and they never admitted that the evidence in the case conclusively established these facts, as can be seen from a perusal of the transcript of the record in the case.

Having assumed this premise—which the defendants respectfully contend is shown by the record of the case to be without foundation—the majority opinion proceeds to state that (Tr. of Rec., p. 322):

> "The ordinary course of business of parties selling, making and shipping goods on orders of their customers is to furnish such customers with lists of the goods they offer to make and sell and the prices thereof, for the customers to send to the vendors written orders for the goods they wish to buy at those prices, the receipt and acceptance of which the sellers acknowledge in writing. Thereupon, such orders become legal and binding contracts on the part of the sellers to make and ship the articles to the customers at the places specified therein and on the part of the customers to receive and pay the specified prices for the goods" (citing Rearick v. Pennsylvania, 203 U. S. 507, 511).

us, is emphasized by the Court, where it says (page 512):

> "The brooms were **specifically appropriated to specific contracts** in a practical if not in a technical sense. Under such circumstances it is plain that whatever might have been the title, **the transportation of the brooms for the purpose of fulfilling the contracts was protected commerce.**"

To this we may add that the plainly indicated purpose of the ordinance in question was, by the exaction of a large fee for a license, to make it unreasonably difficult for any person in traveling through the state to secure orders for interstate shipment, and the enactment of such an ordinance, therefore, was not an indirect and incidental interference with interstate commerce, **but a direct attack upon it,** and as such violated interstate commerce.

But suppose the orders were given for these brooms and the raw material out of which they were to be manufactured lay in the factory, within the state in which they were to be manufactured, could the fact that this raw material was intended by its owner to be manufactured into an article which he had contracted to sell and deliver in another state prevent the state of their location from imposing a tax upon it? Not only do the long line of authorities from the case of Coe v. Errol, supra, down to the case of

Heisler v. Thomas Colliery Co., 43 Sup. Ct. Rep. 83, hold that the states cannot be thus restricted in the exercise of their taxation power, but if they were so restricted the whole foundation would be swept from underneath the taxation powers of the state, and the mere assertion of interstate orders to manufacture goods from raw material would be a sufficient defense to any attempt upon the part of the state to exercise this power over its own citizens. We submit that no such drastic and sweeping invasion of state control was ever intended or declared in the Rearick case, supra, and this is made abundantly clear by the reference in that case to the case of the American Steel & Wire Company v. Speed, 192 U. S. Reports 500. An extract from the latter case is as follows (page 513):

> "But that decision did not modify the cases we have cited (Brennan v. Titusville, 153 U. S. 289; American Express Company v. Iowa, 196 U. S. 143; Caldwell v. North Carolina, 187 U. S. 622). It dealt with a case where a mass of nails and iron wire, were collected at Memphis from other states by a manufacturer **for all purposes**. Some of the goods to be sold on the spot, some ultimately to be forwarded to other states, **but no package being consigned or intended for any special customer or free from the chance of being sold by a new bargain in Tennessee. Under such circumstances the goods were liable to taxation in that state.**"

Here, therefore, is a clear and well-defined distinction between the application of the commerce clause and the Anti-Trust Act to manufactured goods specifically appropriated to interstate commerce and the raw material out of which they have to be manufactured, as was the status of the articles in the instant case.

Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 246, 20 Sup. Ct. Rep. 96, 109.

The above case is cited in the majority opinion as authority for the proposition that interstate commerce within the meaning of that term in the Constitution includes not only the contract and the transportation, but every initiatory, negotiating and intervening act of the parties from the time that the intercourse relating to it commences until transportation and delivery have been completed, and a large number of cases, United States and Federal, are cited in support of this proposition.

Among the cases cited are:

Butler Bros. Shoe Company v. United States Engineering Company, 156 Fed. 117;

International Text Book Company v. Pigg, 217 U. S. 91, 107;

Dahnke-Walker Milling Company v. Bondurant, 42 Sup. Ct. Rep. 106-8;

United States v. Reading Company, 226 U. S. 324, 367, 368;
Hopkins v. United States, 171 U. S. 578, 598;
United States v. Swift & Company, 122 Fed. 529, 531;
Welton v. State of Missouri, 91 U. S. 275.
(See page 321, majority opinion, Appendix B.)

Upon the basis of the principle above declared, the majority opinion asserts "that contracts evidenced by the unfilled orders in the instant case were contracts and transactions in interstate commerce, and that the manufacture of the goods pursuant to the orders was a transaction of interstate commerce and that a restraint imposed upon the selling, making, loading, shipping or transportation of the goods was the restraint denounced by the Anti-Trust Act, and brought the subject matter of, the parties to the suit and the relief of the Court granted far within the jurisdiction of the federal court under the Anti-Trust Act." We respectfully submit that this case does not support that proposition.

In the Addyston case, supra, the defendants were charged in the petition with having entered into a combination and conspiracy among themselves, by which they agreed that there should be no competition between them in any of the states or territories mentioned in the agreement (comprising thirty-six in all) in regard to manufacture and sale of cast iron

pipe and that in furtherance of the agreement and conspiracy, the defendants had been selling and shipping the pipe manufactured by them into other states. The prayer was for a forfeiture of the pipe from one state to another and for a decree dissolving the conspiracy and an injunction. In addition to demurrers to the prayer for the confiscation of the goods, answers were filed admitting the existence of the association between the defendants for the purpose of avoiding the loss that they would sustain by ruinous competition between them, but denied that their association was in restraint of either state or interstate trade, or that it was a monoploy or a violaion of the Anti-Trust Act, and this Court (page 240) said:

> "It was the intention, as it was the purpose, of the combination to **directly and by means of such combination** increase the price for which all contracts for the delivery of the pipe within the described territory should be made, and the latter result was to be achieved by abolishing all competition between the parties to the combination."

And this Court, after pointing out that the direct and immediate result of the combination was necessarily a restraint upon interstate commerce in respect of the articles manufactured by the parties for interstate transportation, added:

> "The defendants, by reason of the combination, could only send their goods out of the state

in which they were manufactured for sale or delivery in another state upon terms and pursuant to the provisions of such combination" (page 241).

Under these circumstances, it seems to us little wonder that this question was very pertinently asked by the Court:

> "Was not this a direct restraint upon interstate commerce?"

It is impossible to conceive a situation in which it could be more so. Again, in the same case, this Court further says (p. 243):

> "The combination thus had a direct immediate and **intended** relation to and effect upon the subsequent contract to sell and deliver the pipe."

It is at once apparent, we submit, from this language that only such combinations whose objects were direct, immediate and intended by the participants in that sense to restrain interstate commerce could be held to be under the federal control.

Emphasizing this view, we again quote the language of this Court in the same case (p. 246):

> "It is almost needless to add that we do not hold that every private enterprise which may

> be carried on chiefly or in part by means of interstate shipment is therefore to be regarded as so related to interstate commerce as to come within the regulating power of Congress."

And in the Addyston case, also, in affirming the doctrine of the Knight case, supra, the Court says:

> "Such enterprises may be of the same nature as the **manufacturing of refined sugar** in the Knight case—that is, the manufacturers may be engaged as manufacturers of a commodity which they may hereafter **intend at some time to sell and possibly sell in another state;** but **such a sale,** as we have already held, is an incident to and not the direct result of the manufacturers, and so is not a regulation of or an illegal interference with interstate commerce. **That principle is not affected by any thing herein decided.**"

In the Addyston case, supra, the present Chief Justice of this court, in his capacity as Chief Justice of the United States Court of Appeals for the Sixth Circuit, after discussing the decision of this Court in the case of United States v. Knight & Company, 156 U. S. 1, 15 Sup. Ct. Rep. 249, which was the basis of the decision of the court below, and pointing out the distinction between the questions involved in the Knight case and that under considera-

tion of the Court of Appeals, says (State v. Addyston Pipe and Steel Co., 85 Fed. Rep. 297):

"It seems to us clear that from the beginning to the end of the opinion the Chief Justice draws the distinction between **a restraint upon the business of manufacturing and a restraint upon** the trade or commerce between the states. In the articles after manufacture with the manifest purpose of showing that the regulating power of Congress under the Constitution could affect only the latter, while the former (i. e., the business of manufacturing) **was not under federal control and rested wholly with the state.**

"Among the subjects of commercial regulation by Congress he expressly mentions contracts to buy, sell or exchange goods to be transported amongst the several states, and leaves it to be plainly inferred that the statute does embrace combinations and conspiracies **which have for their object to restrain** and which necessarily operate in restraint **of the freedom of contracts.**

"The citation of the case of Coe v. Errol was apt to show that **merchandise before its shipment across state lines was not within the regulating power of Congress and a fortiori that its manufacture was not,** while Kidd v. Pearson clearly made the distinction between the absence of power in Congress to control manufacture merely because the manufacturer intends to add to interstate commerce with the product, and the power which Congress has to prevent obstruction to interstate transportation in the product when made.

> "But neither of these cases control the one now under consideration. The subject matter of the restraint here was not articles of merchandise or their manufacture, but contracts for sale of such articles to be delivered across state lines and the negotiations and bids preliminary to the making of such contracts, all of which, as we have seen, do not merely affect interstate commerce but are interstate commerce."

And in pointing out the misapplication of the doctrine of the Knight case and the other cases cited before, Chief Justice Taft adds that:

> "The error into which the Circuit Court fell, it seems to us, was not in observing the difference between the regulating power of Congress over contracts and **negotiations for sales** of goods to be delivered across state lines and that over the **merchandise the subject of such sales and negotiations. The goods are not within the control of Congress until they are in actual transit from one state to another, but the negotiations** and making of sales which necessarily invoke in their execution the delivery of merchandise across state lines are interstate commerce and so within the regulating power of Congress even before the transit of the goods in performance of the contract has begun."

In the Addyston case also we find the Chief Justice emphasized the view of the Court of the reason why relief was not granted in the Knight case, be-

cause the contracts and acts of the defendants in that case bore no direct relation to commerce between the states or with foreign nations and significantly added (page 299):

> "That the defendants in the present case combined and contracted with each other for the purpose of restraining trade and commerce among the states covered by their agreement in the articles manufactured by them **is too clear to admit of dispute.**"

In the Knight case, the Supreme Court said:

> **"Nothing in the proofs to indicate any intention to put a restraint upon trade or commerce."**

We may here remark that the statement of the Addyston case made by Chief Justice Taft was not only approved by this Court, but held to include all that was essential to the discussion therein and to be fully borne out by the facts set forth in the record, and the opinion as relating to the interstate questions involved was not only approved but practically adopted as the opinion of this Court. We have cited the extracts from the opinion in the Addyston case by the present Chief Justice of this Court, because it appears to us to very accurately contain every element of the federal question involved in the instant case, shows the reach of the domain of

federal jurisdiction in interstate commerce, the clear and well defined distinction between contracts for the sale of goods and their manufacture and clearly defines the limits of federal authority leaving to the state the control which properly belongs to it.

In the instant case, as pointed out by Judge Stone in his dissenting opinion:

> "There was no specific purpose or intent to affect interstate commerce, such as was alleged, for example, in the United Mine Workers case, supra. Nor is there a word of testimony tending to show that the respondents had any knowledge of or cared anything about whether the business of complainants was state or interstate in character" (Tr. of Rec., p. 342).

We respectfully submit that upon the basis of the Addyston case, supra, the reasoning of the majority opinion that

> "The acts of the customers in sending the orders were initiatory acts in contracts and in interstate commerce, the receipt and acknowledgment of the receipt of the orders, the manufacture of the goods pursuant thereto, the packing, loading, shipping of them were intermediate steps and parts of, and the delivery and payment for the goods were the final steps of contract and transactions in interstate commerce, and the direct restraint, and for a time the complete pre-

vention and thereafter the partial prevention of the taking of these steps by the unlawful means used by the defendants proved by the evidence, whether that restraint was imposed upon the selling, the making, the packing, the loading, the shipping or the transportation of the goods, was the very restraint denounced by the Anti-Trust Act, and brought the subject matter of the parties to the suit and the relief the Court granted far within the jurisdiction of the federal court under the Anti-Trust Act."

not only ignored the admitted fact in the instant case that the goods were never manufactured, but even if they were, and following the doctrine of the Rearich case, supra, **they were not specially appropriated to interstate commerce**, that by no process of reasoning, however subtle or refined, could manufacture of goods, even though specially ordered to be manufactured by persons in other states, come within the category of interstate commerce, except when they were actually in the course of transit out of the state of manufacture or subject to the exception in the Rearich case, i. e., especially appropriated to interstate commerce.

The majority opinion also cited the language of this Court in the Addyston case supra, as follows (page 242):

"When Congress has enacted a statute such as the one in question, any agreement or combi-

nation which directly operated, not alone upon the manufacture, but upon the sale, transportation and delivery of an article of interstate commerce by preventing or restricting its sale, etc., thereby regulates interstate commerce to that extent and to the same extent trenches upon the power of the National Legislature and violated the statute."

Now it seems clear to us that what this Court meant to imply in the above statement was that the combination or agreement, in order to constitute a violation of the federal Anti-Trust Laws, should, as by means of a boycott, as in the case of Loewe v. Lawlor, 208 U. S. 274, be directed towards the prevention of the sale which under the authorities would clearly constitute a violation of the interstate commerce laws, but should in order to cover a case like the instant one include, not alone the manufacture of the goods, but their actual transportation to a destination outside of the state, and furnishes no basis for the doctrine in the majority opinion that even where there was no interference with the sale as was the situation in the present case, yet because the plaintiffs had interstate orders to fill—a fact which was not known to the defendants or at all events not proved against them—that the mere interference with the manufacture of the goods constituted a violation of interstate commerce and to such an extent as not

even the state in which the raw material lay could attempt to tax it without violating the federal law, and that too, entirely regardless of whether the raw material was ever fully manufactured for shipment into interstate commerce or whether its owners might change their minds and sell it within the state of its location, either in its raw or manufactured condition. We respectfully submit that this Court never contemplated such a wide and sweeping assertion of exclusive federal control to the almost entire exclusion of the control of the state, and this doctrine, as it seems to us, is in direct conflict with all of the decisions of this Court prior to the Addyston case and even to the Addyston case itself, for we find that this Court (page 242), after holding that the contract was one for the sale and delivery of a certain kind of pipe and that it was not generally essential to its performance that it should be manufactured for that particular contract, although it sometimes might be, and that if the bidder had on hand pipe of the kind specified or if he could procure it by purchase, he could in most cases deliver it in fulfillment of his contract just as if he manufactured it for the express purpose of the contract, pointedly and emphatically makes the distinction clear beyond possibility of doubt between federal control as applied to sale and

delivery and as applied to manufacture in these words:

> "**It is the sale and delivery of a certain kind and quality of pipe and not the manufacture which is the material portion of the contract, and a sale for delivery beyond the state makes the transaction a part of interstate commerce.**"

If raw material lying in a manufacturing plant within the borders of a state is to be considered a part of interestate commerce so as to vest the exclusive control of it within federal authority merely because its owner has contracted to sell articles which might be manufactured out of it to customers outside the state, then we submit that not only would the situation to which Circuit Judge Stone referred in his dissenting opinion, namely, that the

> "entire police powers of the state would be in danger of absorption by the national government,"

but that the very situation described in the case of **Heisler v. Thomas Colliery Company, 43 Sup. Ct. Rep. 86,** by his Honor Justice McKenna, speaking for this Court, would be brought about:

> "If the possibility, or, indeed, certainty, of exportation of a product or article from a state determines it to be in interstate commerce before

the commencement of its movement from the state, it would seem to follow that it is in such commerce from the **instant of its growth** or production, and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other states at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to states other than those of their production."

And to this sweeping declaration we may add that if the same doctrine be held to be sound that the distinction between interstate and intrastate judicial jurisdiction would practically be eliminated, since there would hardly be a vestige of state control left. To illustrate this, suppose the owner of raw material lying within the state of his residence has contracted to sell and deliver articles manufactured out of it in interstate commerce. If one of his debtors living in the state refused to pay him a debt which he owed and the owner of the raw material is able to prove

that without such payment he cannot manufacture his raw material and fill his interstate commerce orders, then this must be held—if the principle announced in the majority opinion be correct—to be a violation of the interstate commerce laws and thus in a mere simple contract debt and between citizens of the same state, the state courts are deprived of jurisdiction, and since it will always be easy to establish the existence of contracts outside of the state for the delivery of goods manufactured within it, the state courts in a great number of cases will have no jurisdiction over litigation between the citizens of the state, but that jurisdiction can be successfully challenged.

It is asserted in the majority opinion that (Tr. of Rec., p. 324):

> "The evidence establishes the facts that for years the plaintiffs had been and were, when the operation of the defendants' combination stopped them, continuously conducting vast currents or streams of interstate commerce in such articles as they contracted to sell, make and deliver from the State of Missouri into other states where their customers received them."

There was no evidence as to what portion of this went into interstate commerce or what proportion the volume of business in interstate commerce done by

the plaintiffs bore to the entire production of these goods in the United States of America, or that the fact—even if it be admitted—that the plaintiffs could not manufacture their goods and fill their orders had any effect whatever upon the prices of these articles throughout the country. In the language of Circuit Judge Stone in his dissenting opinion:

> "It is not shown in this evidence that the volume of interstate business of these complainants was such as to affect prices, in interstate commerce, of such goods, if these factories ceased their output. It is shown that they manufactured several million dollars worth of goods annually and that much of this went into interstate commerce. But we are not, in any way, advised what percentage or proportion this business bore to the entire volume of interstate business in such goods. I do not think we are authorized, with no evidence whatsoever, to say that interstate business, as a whole, in this kind of products would be affected by this strike, and thus attempt to sustain our jurisdiction by bringing this case within the rule of application as laid down in United States v. Patten, 226 U. S. 525, and similar cases."

Stafford v. Wallace, 42 Sup. Ct. Rep. 397, 403, 258 U. S. 495.

Nor, we submit, is the majority opinion strengthened by the case of Stafford v. Wallace, supra, which

involved the constitutionality of the Packers Stock Yards Act of 1921, 42 Statutes 159, as far as the act provides for the supervision by federal authority of the business of the commission men and live stock dealers in the great stockyards of the country. A reference was made to the investigations of Congress of the activities of the owners of the stockyards in monopolizing the markets for cattle and the sale of same. It was held in that case (page 515) that:

> "The stockyards were not places of rest or final distribution. Thousands of head of live stock arrived daily by carload and train-load lots and must be promptly sold or disposed of and moved out to give place to the constantly flowing traffic that presses behind. **The stockyards are but a throat through which the current flows** and the transactions which **occur therein are only incidents** to this **current from the West to the East** and from **one state to another.** Such transactions cannot be separated from the movement to which they contribute and necessarily take on its character."

After intimating that the sales under the conditions made could not be referred to as local transactions, and discussing the course of business which took them out of that category, the Court said (page 516):

> "The act, therefore, treats the various stockyards of the country as **great national public utilities** to promote the flow of commerce from the

ranges and farms of the West to the consumers. It assumes that they conduct a business affected by the public use of a national character and subject to national regulation. That it is a business within the power of regulation by legislative action needs no discussion."

And the Court significantly adds:

"Nor is there any doubt that in the receipt of the live stock by rail and in their delivery by rail the stockyards are an interstate agency."

To bring the complainants within the doctrine of the Stafford case, supra, it would be necessary to hold that these plaintiffs were conducting great national utilities to promote a flow of commerce from north to south and from state to state; that they were an interstate agency and conducting a trade so vast as to make the rest of the manufacturers of the country in the same line of goods fade into insignificance in comparison.

In the case of Swift & Company v. United States, 196 U. S. 398, 399, also cited in the majority opinion (Tr. of Rec., p. 325), where the bill charged a combination of a dominant portion of the dealers of fresh meat throughout the United States, it was said (page 396):

"The statute gives this proceeding against combinations in restraint of commerce among the

states and against attempts to monopolize the same. **Intent is almost essential to such a combination and is essential to such an attempt.**"

And at page 397 of that case this Court further says:

> "The effect of the combination upon the commerce among the states is not accidental, secondary, remote or merely probable (which is the situation in the instant case). And on the same page it is said: '**The subject matter was sales.**' And the very point of the combination was to restrain and monopolize commerce among the states in respect to such sales."

In the Swift & Company case, supra, the case of Hopkins v. United States, 171 U. S. 578, is differentiated from the Swift case because the business embraced in this case was of a merely local character, even if the objects to be sold were objects of interstate commerce and the effect of the commerce was only indirect and not within the act (page 397).

Coe v. Errol, 116 U. S. 517.

So, also, the doctrine of the case of Coe v. Errol was held not to apply to the Stafford v. Wallace case, supra, and the very principle for which we are contending, as cited in the case of Coe v. Errol, supra,

was distinctly approved at page 526 in the following language:

> "Property in a state which its owner intends to transport to some other state, **but which is not in actual transit** and in respect to the disposition of which he may change his mind, is not interstate commerce just because of the intention of the owner, and may therefore be taxed by the state where it is."

But even if a conspiracy existed for the purpose of unionizing the plaintiffs' plants between the defendants in the instant case, there was an utter absence of any intent to interfere with interstate commerce so as to bring it within the doctrine of the Stafford and the Swift cases, supra.

Dahnke-Walker Milling Company v. Bondurant, 257 U. S. 282.

In the Dahnke-Walker Milling case, supra, it was held that when goods in one state are transported into another for the purpose of sale, interstate commerce embraces their sale after they reach their destination and while they are in the original packages. It was said in that case that the goods were protected from state regulation because while in the original packages they were regarded as interstate commerce and it was held that a person or corpora-

tion from one state could go into another for all legitimate purposes of interstate commerce, and any statute of the latter state which attempted to lay a burden upon the exercise of this privilege was void.

But this case cannot be held to apply to the instant case, because the goods in the former had been shipped from the state of production or manufacture, and in the instant case the goods had never come into existence.

United Fuel Gas Company v. Hallanan, 257 U. S. 277.

In the case of United Fuel Gas Company v. Hallanan, supra, also cited in the majority opinion, the tax imposed upon the transportation of oil, so far as the quantity is produced in but moving out of West Virginia, was held void under the commerce clause. This was so, as it appears to us, because the oil was held to be moving into interstate commerce conveyed by pipes through the state and out of it, and these pipes might be very well considered instrumentalities of interstate commerce.

The continuously flowing currents of interstate commerce, as mentioned in the majority opinion, lacking continuity would simply be, as applied to the facts in the instant case, a piece of flowery metaphor.

The majority opinion says at page 326 of transcript of record:

> "Counsel argue that the defendants had no purpose to restrain the interstate commerce of these plaintiffs, that their only purpose was to force the plaintiffs to employ none but union men and to grant other demands which the defendants made."

We respectfully disclaim having made any such argument, either in brief or orally. It was very true that in the District Court, and before the trial judge, the question of the jurisdiction of the federal court in this case, which seems to us to be the big question in the case, was particularly stressed, but no argument of the character mentioned in the majority opinion was made by implication or otherwise. Upon the contrary, we respectfully contend that a perusal of the record in this case will show that there was no conspiracy proved to exist between the defendants for the purpose of unionizing the plaintiffs' plants or for any other purpose. The strike was due to a failure upon the part of the plaintiffs and the defendants to reach an understanding for a renewal of their contracts, and it was both held by the trial judge and admitted by the plaintiffs (page 176, Tr. of the Rec.) that the strike was perfectly proper and legal and the defendants had the right to strike.

The majority opinion on the assumption that the argument just mentioned had been made by counsel for the defendants further said:

> "But one can hardly wink so fast as not to see that the real purpose of their prevention of the plaintiffs from manufacturing the articles they had contracted to sell, make and deliver in interstate commerce, and their prevention of the flowing of the currents of these articles in interstate commerce, was to deprive the plaintiffs of their income from the sale and deliveries of the goods and by this continuing loss of income to compel the submission of the plaintiffs to their demands."

We respectfully submit that the application for injunction, being a quasi-criminal proceeding, should, like every other species of equitable relief, be only granted on evidence which supports the allegations of the bill, and that the same rules of evidence should apply to it as to other proceedings, and that this evidence should be based upon facts fully proved, and if a conspiracy were alleged that every link connecting that conspiracy with the defendants should be proved and the case against the defendants should not be based upon suspicion and conjecture.

The majority opinion also held (Tr. of Rec., p. 326):

> "That the natural and inevitable effect of the prevention by the defendants of the making by the plaintiffs of the articles they had made interstate contracts to sell, make and deliver was the prevention of their performance of their contracts and the prevention or partial prevention of their interstate commerce and this result was so evident and unavoidable that the defendants could not have failed to know to purpose and to intend that this should be the result."

This portion of the opinion is most completely answered by Circuit Judge Stone in his dissenting opinion, where he says (Tr. of Rec., p. 342):

> "This record is entirely barren even of a suggestion that there existed here any actual intent to affect interstate commerce. The sole purpose of this strike was to benefit and strengthen the labor unions here involved by unionizing these particular plants. Of course, this was intended to be accomplished by curtailing, and if possible, preventing plaintiffs from manufacturing their products. This was to be brought about by preventing them from procuring the necessary labor except through employment of members of the union. But there was no specific purpose or intent to affect interstate commerce such as was alleged, for example, in the United Mine Workers case, supra. Nor

is there a word of testimony tending to show that the respondents had any knowledge of or cared anything about whether the business of complainants was state or interstate in character. That consideration was unimportant to their purposes. Therefore, if an intent to interfere with interstate commerce is to be found it must be imputed, as matter of law, not fact, from the circumstances that to prevent this manufacture would naturally and inevitably prevent the products thereof going into interstate commerce."

United States v. Patten, 226 U. S. 525.

In the case of United States v. Patten, supra, the Court considered the sustaining of demurrers to indictments in a criminal prosecution under the Anti-Trust Act of July 2, 1890, 26 Statutes 209, Chap. 647. The charge was the organizing of a conspiracy to establish a corner in cotton and in providing for the purchase of speculators from the New York cotton exchange of quantities of cotton for future delivery in excess of the amount available for delivery when deliveries were to be due. Thus, an abnormal demand was to be created on the part of such sellers who would pay excessive prices to obtain the cotton for delivery. The immediate effect of this was to cause a rise in prices throughout the country and thus impede and obstruct interstate commerce in

cotton. This the Court construed as a direct attack on interstate commerce and very carefully discriminated it from those where the attack was indirect, in the following language:

> "Of course, the statute does not apply where the trade or commerce to be affected is purely intrastate. Neither does it apply—as this Court has often held—where the trade or commerce is interstate, unless the effect therein **is direct, not merely indirect.**"

The Patten case, supra, is cited in the opinion of this Court in the case of United Mine Workers of America v. Coronado Coal Company, supra, as is also the case of Stafford v. Wallace, supra. After stating that Congress had the power to punish conspiracies in which practices though not really part of interstate commerce were likely to obstruct, restrain and burden it, said:

> "But in the latter case the intent to injure, obstruct or restrain interstate commerce must appear as an obvious consequence of what is to be done, or be shown by direct evidence or other circumstances."

United Mine Workers of America v. Coronado Coal Company.

The charge in the above case was that there had been and at the time of the filing of the bill of com-

plaint was a continuously operating conspiracy between the union coal operators and the international union to restrain interstate commerce in coal and to monopolize it, and that the work of District No. 1 at Prairie Creek was a step in that conspiracy for which it can be held liable under the Anti-Trust Act, and this Court said:

> "Coal mining is not interstate commerce, and the power of Congress does not extend to its regulation as such. In Hammer v. Dagenhart, 247 U. S. 251, 272, we said:
>
> > "'The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof (Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. 439).'"

To this it was added:

> "Obstruction to coal mining is **not a direct obstruction to interstate commerce** in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce."

The same process of reasoning will apply, we submit, to the instant case, but the majority opinion

cites the following from the Coronado Coal Co. case, supra:

> "Coal mining is not interstate commerce and obstruction of coal mining, although it may prevent coal from going into interstate commerce, is not a restraint of that commerce, unless the obstruction to mining is intended to restrain commerce in it, or has necessarily such a direct, material and substantial effect to restrain it that the intent reasonably must be inferred" (Tr. of Rec., p. 327),

and draws the conclusion from this citation:

> "That if the obstruction to coal mining is intended to restrict interstate commerce or necessarily has such a direct material and substantial effect to restrain it that the intent reasonably must be inferred, then such an obstruction to coal mining is an unlawful restraint to interstate commerce. So, while manufacture is not interstate commerce, its relation to interstate commerce is governed by the same rule,"

and it is further said in the majority opinion (Tr. of Rec., p. 327):

> "If the obstruction to it is intended directly to restrain interstate commerce, or if such obstruction necessarily has such a direct, material and substantial effect to restrain it, that the intent so to do reasonably must be inferred, then

> such obstruction to manufacture is a direct restraint of interstate commerce remediable by the federal court under the Anti-Trust Act. The case in hand falls directly under this rule."

In establishing this proposition the majority opinion stated that:

> "The obstruction and prevention of the manufacture of the articles which the plaintiffs had made interstate commerce contracts to make, sell and deliver, and to pour into their continuously existing currents of interstate commerce, could not have been made without the knowledge of the defendants that their direct, material, necessary, substantial and inevitable effect would be to restrain or to prevent the plaintiffs' interstate commerce in such articles."

Now, it seems to us, that was a complete misapplication of the principle announced by this Court in the Coronado Coal Company case, supra. No such intent could, as pointed out by Circuit Judge Stone in his dissenting opinion, be reasonably inferred.

Conspiracy.

From the evidence in the record there is not the slightest proof that the defendants ever entered into or organized or attempted to carry into effect a conspiracy to interfere with the interstate commerce of

the plaintiffs by any statement or by any of their actions. It is admitted, as we have before stated and the learned trial judge so found, that there was no interference with any shipment from the plaintiffs' factories and if the intent of interfering with the interstate commerce of the plaintiffs is to be imputed—as stated by Judge Stone in his dissenting opinion—to the defendants as a matter of law, it can only be imputed to them by their own overt acts or the acts of other coconspirators—assuming the existence of a conspiracy.

Now, as we take it, an "**overt act**" means simply an open, visible act from which some other secret act or some covert and dark intention of the mind can by just and sound reasoning be inferred. An intention of the mind cannot be proved except by overt or visible acts which flow from it, and which cannot be reasonably accounted for except by the existence in the mind of such a design. Now, there is no overt or visible act in the entire evidence in this case which can be chargeable to these defendants, which will in any way indicate either a knowledge of any contracts which the plaintiffs might have had in interstate commerce or any direct attempts to interfere with it.

This Court, in the Coronado Coal Company case, supra, distinguished it from that of Lowe v. Lawler, 208 U. S. 274. There the gist of the charge, held

to be a violation of the Anti-Trust Act, was the effort of the defendants, members of a trade union, by a boycott against a manufacturer of hats to destroy his interstate sales in hats, and the reason of the distinction was pointed out by his Honor, Chief Justice Taft, in the following significant language:

> "The direct object of the attack was interstate commerce."

It appears to us, that if this rule announced in the above citation from the Coronado Coal Company case, supra, be applied to the solution of the problem referred to in the dissenting opinion of Circuit Judge Stone in the following words:

> "But is it true when the problem before the Court is to define that somewhat difficult line which separated the powers of the nation over interstate commerce from the powers of the states over intrastate commerce and internal police regulation,"

that there will be little difficulty in solving it, and in point of fact such difficulty will disappear, for it will be always possible to determine by direct proof or from inferences based on just and sound reasoning whether or not the direct object of the attack was interstate commerce. As an illustration of this

principle, let us quote from the Coronado Coal Company case, supra (page 583):

> "In the case at bar there is nothing in the circumstances or the declarations of the parties to indicate that Stewart, the president of District No. 21, or Hull, its secretary-treasurer, or any of their accomplices, **had in mind interference with interstate commerce** or competition when they entered upon their unlawful combination to break up Bache's plan to carry on his mines with nonunion men. The circumstances were ample to supply a full local motive for the conspiracy. Stewart said, 'We are not going to let them dig coal—the scabs.' His attention and that of his men was fastened on the presence of nonunion men in the mines in that local community. The circumstance that a car loaded with coal and billed to a town in Louisiana was burned by the conspirators has no significance."

We submit that the majority opinion in this case is in direct and positive conflict with the doctrine of the Coronado Coal case.

Gable v. Vonnegut Machinery Company
(274 Fed. 66).

The majority opinion is also in direct and positive conflict, we submit, as stated by Circuit Judge Stone in his dissenting opinion, with the case of Gable v. Vonnegut, supra, decided by the Circuit Court of Ap-

peals for the Sixth Circuit. In this case the defendants were charged with having entered upon a strike in furtherance of a conspiracy to interfere with the sale and delivery of articles manufactured by a tool company in Ohio to points outside that state, and that the defendants had unlawfully interfered with persons en route from points outside the State of Ohio to the tool company's plants. In that case, too, the allegations of the bill set forth that the tool company's business consisted largely in the sale and delivery of articles manufactured by it to points outside of the State of Ohio, and the Court held that all these statements in the bill of complaint fell short of alleging interference with interstate commerce under either the Sherman or the Clayton Acts, and that:

> "Neither of these statutes furnishes a remedy against acts merely because they incidentally and indirectly affect interstate commerce; they apply only to acts which directly and immediately relate thereto. Manufacture is not commerce. None of the cases cited suport the theory that a manufacturer may invoke the jurisdiction of the federal court merely because a strike interfered with the manufacture of his products which are sold generally in interstate commerce."

And the Court further said:

> "The record before us is barren of evidence that the object of the strike was to interfere with

interstate commerce. So far as appears, either directly or inferentially, the strikers' only object was to obstruct the operation of the Tool Company's plant. The fact that shipment was interfered with only because goods were not manufactured merely incidentally and indirectly affected interstate commerce."

Dissenting Opinion of Circuit Judge Stone.

The cases bearing on the issue in the instant case are discussed so fully and so ably by Circuit Judge Stone in his dissenting opinion that we shall not specifically refer to them, but content ourselves with a brief reference to the case of Kidd v. Pearson, 128 U. S. 1, l. c. 20, where the distinction between buying, selling and transportation and manufacture in relation to interstate commerce is most clearly set forth. There it is said:

"No distinction is more popular to the common mind and more clearly expressed in economic and political literature than that between manufacture and commerce. **Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different.** The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation."

And in the case of United States v. Knight, 156 U. S. 1, Mr. Justice Harlan said:

> "In Kidd v. Pearson we recognized, as had been done in previous cases, the distinction between the mere transportation of articles of interstate commerce and the purchasing and selling that preceded transportation. It is said that manufacture precedes commerce and **is not a part of it, but it is equally true that when manufacture ends** that which has been manufactured becomes a subject of interstate commerce" (page 35).

It is also stated in the majority opinion that

> "the defendants are estopped from denying the necessary direct and inevitable effects of their acts."

This means, as we view it, that the defendants, however innocent they may be of any intention to obstruct or interfere with the interstate commerce of the plaintiffs, must in a quasi-criminal proceeding face a presumption of guilt which they are estopped from either denying or disproving. We respectfully submit that this is not the law.

To this we may add that the **very best proof that could be made that the defendants had no intention of interfering with the plaintiffs' interstate shipments**

was that, as the facts stated and the learned trial judge so found, that there was no interference whatever with the shipment of any of the plaintiffs' goods that were manufactured from the factory to the freight stations, nor to the importation of raw material out of which the goods were to be manufactured.

We submit, in conclusion, that the plaintiffs should not be permitted to stamp the courts of the state which gave them their charters and in which they are doing business as incapable of determining their right to equitable relief or unwilling to accord it in disputes between them and citizens of the same state—if they prove themselves entitled to such relief—as their attempt to ignore the jurisdiction of these courts implied. We submit, further, that to give to the federal authority the sweeping control of the internal affairs of the states, which the majority opinion is stated by Circuit Judge Stone to give, and which in our humble opinion it does give in the instant case, would be destructive of the most skillfully regulated system of our government which keeps both federal and state governments moving in their proper orbits so that one cannot clash with the other, for it is always—as said by the Chief Justice of this Court in the Coronado case—it is of far higher importance

that the fundamental limitations in respect to the federal jurisdiction should be preserved inviolate.

Respectfully submitted,

JOHN P. LEAHY,
Solicitor for Appellants.

Service of the above brief and receipt of copy thereof is hereby accepted and acknowledged this 19th day of December, 1923.

CHAS. A. HOUTS,
MAT J. HOLLAND,
Solicitors and Counsel for Appellees.

APPENDIX A.

Opinion of the District Court on the Granting of the Permanent Injunction.

Plaintiffs, and each of them, are engaged in the manufacture of trunks, valises, hand bags and similar articles, which they sell on orders in the State of Missouri, and in divers other states of the Union. Some of the plaintiffs sell in foreign countries a part of their output. By far the larger proportion of plaintiffs' business consists in sales, on orders for their products, in other states than the State of Missouri.

Prior to, and at the time of, the issuance of the temporary restraining order herein, each of the plaintiffs had on file many unfilled orders from states other than the State of Missouri, for goods, which goods, when manufactured, were to be shipped in interstate commerce. A strike was called by the defendants, which are local labor unions, or officers and members of such unions, pursuant to a vote taken by the unions and in the regular way under the rules and by-laws of the unions. This strike was called after a fruitless effort to agree upon wages and upon a contract embracing the terms and conditions of future employment, which seems to have had therein the phase of collective bargaining.

Upon the calling of the strike, which followed immediately after the failure to agree on a new contract, practically all of the employes of the plaintiffs quit plaintiffs' employment. Thereafter, and until the temporary restraining order was issued herein,

the several shops of plaintiffs were picketed by striking employes; in many cases there were from three to twenty, or more, pickets employed around and about the shops of plaintiffs, or some of them. During this picketing many unlawful and unpeaceful acts were committed by the pickets, such as calling the various potential employes, and divers employes who continued in the employment of plaintiffs, vile and opprobrious names; there were instances of domiciliary visits accompanied by threats, and various other things of a like nature too numerous to mention.

These unlawful acts prevented plaintiffs from employing other workmen to take the places of the strikers; so that plaintiffs were unable to manufacture the goods necessary to fill both the interstate and intrastate orders which they had on hand. Many of the goods, in fact the larger proportion thereof, which plaintiffs would have made, but were in the mode above mentioned prevented from making, would have been shipped when manufactured, to other states, to fill what is called in the record "interstate orders." There was no actual interference with or hindrance of any interstate movement, or shipment of any goods made by plaintiffs, or by either of them, for the very simple reason that the goods designed for interstate shipment have never come into existence on account of the interference mentioned. For, as forecast, these goods could not be manufactured because the plaintiffs' former workmen struck and quit, and other workmen could not be obtained to manufacture them; these potential workmen being kept away by a too numerous picketing and by

threats and intimidation. Such goods as were actually made by plaintiffs have been shipped in interstate commerce (when such was their destination) without let or hindrance. The methods used by defendants in preventing plaintiffs from obtaining other workmen have been, as stated, in numerous proven instances, unpeaceful and unlawful.

Barring the question of jurisdiction, and the existence of a conspiracy, plaintiffs are unquestionably entitled to the relief by injunction for which they prayed. Indeed, counsel for defendants seemingly concede this is a tacit way, because the burden of counsel's contention is bottomed solely upon the alleged phases of jurisdiction and absence of a conspiracy. There is no diversity of citizenship involved in the case. If this Court has jurisdiction at all, it gets it solely perforce the provisions of Section 1 of the so-called Sherman Anti-Trust Act (26 Stat. 209).

Upon this point it is urged that, since the goods of plaintiffs which they intended to ship in interstate commerce when they came into existence were not in existence at the time defendants unlawfully interfered with plaintiffs' business, the case does not fall either within the purview or protection of the Sherman Anti-Trust Act, supra, and, therefore, this Court has no jurisdiction. Confessedly the point urged is, at least on principle, a close and difficult one. So much of the language of the Sherman Anti-Trust Act, supra, as seems pertinent to this question reads thus:

> "Every contract, combination, in the form [—] a trust or otherwise, or conspiracy in re-

straint of trade or commerce among other states, or with foreign nations, is hereby declared to be illegal" (Sec. 1, Act of July 2, 1890, Chap. 647, 26 Stat. 209).

Pursuant to the provisions of Section 4 of the Sherman Anti-Trust Act, supra, jurisdiction to enforce compliance with the provisions of the Act by injunction is conferred upon the Federal District Courts, sitting as courts of equity. When we read sections 1 and 4 together, and convert the definition of section 1 into plain and concise language, it is simply provided, that every conspiracy in restraint of interstate commerce may be enjoined in a federal court; subject, of course, in a labor dispute to the qualifications set out in the Clayton Act. It is strenuously contended by learned counsel for defendants that when Congress referred, in the Sherman Anti-Trust Act, to the restraints of interstate commerce, it held in mind the usual and ordinary definition of such commerce; and that the questions of when such commerce begins, and when it ends, are referable to the well-known definitions of this commerce which have long been well settled in the federal courts.

Illustrating this view and this contention it was held in the fairly early case of In re Green, 52 Fed., l. c. 113, in an opinion rendered by Judge (afterwards Mr. Justice) Jackson, that

"when the (interstate) commerce begins is determined not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but the actual delivery of it to a common carrier for transportation, or

> the actual commencement of its transfer to another state * * * Neither the production or manufacture of articles or commodities which constitute subjects of commerce, and which are intended for trade, and traffic with citizens of other states, nor the preparation for their transportation from the state where produced or manufactured prior to the commencement of the actual transfer or transportation thereof to another state, constitutes that interstate commerce which comes within the regulating power of Congress."

This definition of interstate commerce with reference to when it begins, learned counsel for defendants urge, has been very lately affirmed and followed by the Supreme Court of the United States in the case of Hammer v. Degenhart, 247 U. S., l. c. 272, where it was said:

> "Over interstate transportation or its incidents the regulatory power of Congress is ample, but the production of articles intended for interstate commerce is a matter of local regulation.
>
> "'When the commerce begins is determined not by the character of the commodity, or by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation or the actual commencement of its transfer to another state (Mr. Justice Jackson, In re Green, 52 Fed. 113).'
>
> "This principle has been recognized often in this court (Coe v. Errol, 116 U. S. 517; Bacon v. Illinois, 227 U. S. 504, and cases cited). If it were otherwise all manufacture intended for interstate shipment would be brought under federal

> control, to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the Constitution when they vested in Congress authority to regulate commerce among the states (Kidd v. Pearson, 128 U. S. 1)."

The above well-known and well-settled definition, touching when articles made in one state and intended for sale in another begin their travels towards such other state, so as to bring them within the constitutional power of Congress to regulate interstate commerce, ordinarily would be regarded as conclusive upon the courts in construing the language used in the first section of the Sherman Anti-Trust Law. **If the matter were one of first impression, in this circuit, I would feel constrained to agree with counsel for defendants, and to hold that the above well-settled definition touching when interstate commerce begins ought to be applied to that term as used in the Sherman Anti-Trust Act, supra.** But the matter is not one of first impression in this circuit. Therefore, **it is my duty, regardless of any personal views or convictions which I may hold** upon the subject, to defer to and follow what I am forced to consider the view taken by the Court of Appeals of the Eighth Circuit.

In the case of Dowd v. United Mine Workers of America et al., 148 C. C. A. 495, local citation 51, it was said by the Circuit Court of Appeals of this Circuit, that:

> "Some of the coal companies were not actually engaged in interstate commerce at the time the alleged acts were committed by the defendants;

but they were preparing to do so; and were prevented from so doing, as they allege, by the wrongs of the defendants. It was held in Pennsylvania Sugar Refining Co. v. American Sugar Refining Co. et al., by the Circuit Court of Appeals for the Second Circuit, 166, Fed. 254, 92 C. C. A. 318, that:

"A conspiracy to prevent a manufacturer who procures his supplies and disposes of his products by means of interstate commerce from engaging in business at all necessarily places restraint upon such commerce. Its flow is restricted and interrupted. The importation and exportation of articles of commerce are directly prevented, and none the less so because the conspiracy may be of so wide a scope as to interfere with interstate commerce also."

To the same effect is Thompson et al. v. Union Castle Mail Steamship Co. et al., 166 Fed. 251, 92 C. C. A. 315 (2nd Circuit).

It is next objected that the alleged wrongs of the defendants do not constitute an interference with interstate trade or commerce. We do not think, since the case of Loewe v. Lawlor, 208 U. S. 374, 28 Sup. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815, and Lawlor v. Loewe, 235 U. S. 5, 522, 35 Sup. Ct. 170, 59 L. Ed. 341, it can be said that this can be considered an open question. In rendering the opinion of the Supreme Court when the case was last before it, Justice Holmes said:

"The substance of the charge is that the plaintiffs were hat manufacturers who employed nonunion labor; that the defendants were members of the United Hatters of North America, and also

> of the American Federation of Labor; that in pursuance of a general scheme to unionize the labor employed by the manufacturers of fur hats (a purpose previously made effective against all but a few manufacturers) the defendants and other members of the United Hatters caused the American Federation of Labor to declare a boycott against the plaintiffs, and against all hats sold by the plaintiffs to dealers in other states and against dealers who shall deal in them; and that they carried out their plan with such success that they have restrained or destroyed the plaintiffs' commerce with other states."

This charge being proven, the learned Justice further said (235 U. S. 534, 35 Sup. Ct. 172, 59 L. Ed. 341):

> "We agree with the Circuit Court of Appeals that a combination and conspiracy forbidden by the statute were proved and that the question is narrowed to the responsibility of the defendants for what was done by the sanction and procurement of the societies above named."

Again, touching the far-reaching power of Section 1 of the Sherman Anti-Trust Act, supra, it was said by the Supreme Court of the United States in Eastern States Lumber Association v. United States, 234 U. S. 600, that that section broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce.

After the decision of the Circuit Court of Appeals of the Eighth Circuit, in the case of Dowd v. United Mine Workers etc., supra, the latter case, under the

style of United Mine Workers of America v. Coronado Coal Co., was again before the Circuit Court of Appeals of this circuit (258 Fed. 829). The question of jurisdiction was again raised and, seemingly, strenuously urged. The Court refused to re-examine the question of jurisdiction, bottomed there, as here, upon the construction of the provisions of the first section of the Sherman Anti-Trust Act, but contented itself with saying upon this point:

> "The learned counsel for defendants neither in their voluminous brief (326 printed pages) nor in their oral argument questioned these statements of facts, nor did they seriously attack the sufficiency of the evidence, but they insist that they do not establish that the plaintiffs were engaged in interstate commerce, and, therefore, these acts were not in violation of the Sherman Act. The leading case relied on is United States v. Knight, 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325, but this case, if not expressly overruled, has been much weakened by the later decisions of the Supreme Court, and it was so held by this Court when this case was here before, 235 Fed. 1, 8, 148 C. C. A. 495. As this Court, when this case was here before, held that the alleged wrongs and torts of the defendants charged in the complaint, and which at the trial were established by substantial evidence, constituted an interference with interstate commerce, and violated the Sherman Act, that opinion is the law of the case, and cannot be again re-examined."

I need not go into the somewhat complicated facts before the Court in the Dowd case, supra. It will suffice to say that if the coal companies, which were

the plaintiffs therein, were, upon the facts, engaged in interstate commerce, then the plaintiffs here are also, upon the facts, engaged, and were at the time of the happening of the matters and things herein complained of, engaged in interstate commerce. In the Dowd case the coal, or much of it, which was intended for interstate commerce, but which was prevented from flowing therein by the unlawful acts of the defendants there, had not been mined, and, therefore, was not in existence as a commodity of any sort of commerce for transportation; moreover, one of the plaintiffs had not engaged in business at all, but was preparing to do so, and was prevented by defendants therein from so doing. So, also here, the goods for which plaintiffs had orders in interstate commerce, and which were to be manufactured for shipment therein, were not in existence. They were prevented from coming into existence by the conspiracy of defendants and by the unpeaceful and unlawful overt acts done and committed by defendants in the carrying out of the conspiracy. The broad language of the Dowd case regarded, the additional fact in that case that a loaded car of coal was actually destroyed would seem too negligible a factor to call for a difference in the rule.

Therefore, following the rule so clearly announced in the Dowd case and the Coronado Coal Company case, as in duty bound, **I am constrained, regardless of my own views, to hold that the plaintiffs here were engaged in interstate commerce** and that the acts of defendants operated as restraints upon that commerce within the purview of the first section of the Sherman Anti-Trust Act.

I may dispose of the question of the existence of the conspiracy more briefly and with less difficulty, at least in my own mind. In order to do this logically a brief reference may again be made to the facts. These facts substantially are, that efforts to agree with plaintiffs on a new contract of employment having failed, the Local Unions, who are the defendants here, immediately called a general strike against the shops of all of the plaintiffs, and thereupon practically all of the employes of plaintiffs quit work and many of them began to picket plaintiffs' shops. This picketing was done in a way that was not lawful, and which is not legally permissible, even under the broad provisions of the Clayton Act. Defendant Unions appointed committees to take charge of and manage this strike, which, of course, largely meant to manage the pickets who were engaged in picketing the shops of plaintiffs. No extra pay seems to have been given to those members of the Union who did picket duty, though apparently the pickets (as were others of the striking employes) were paid strike benefits by the respective unions to which they belonged. The pickets volunteered for duty, but as said above, they were in charge of the committees of the Local Unions. If these pickets committed unpeaceful and unlawful acts, therefore, absent any protest or disciplinary action by the Local Unions, the latter are liable for such acts. The Unions cannot be heard to say that having charge of and controlling these pickets, they are not to be held liable for the divers unlawful acts done by the pickets. If it be said that the Unions in such case should have some knowledge or notice of the unlawful acts committed by pickets

employed by them, and I think this ought to be conceded, the answer is that such knowledge and notice may be inferred from all the facts and circumstances shown by the evidence.

Neither is it necessary to prove the conspiracy alleged in the complaint by direct evidence. Such a conspiracy may be shown by circumstantial evidence. If the rule were otherwise it would ordinarily be impossible to establish a conspiracy in any case; a fortiori, in a labor dispute.

I conclude that the facts and circumstances disclosed a conspiracy within the meaning of the law, and that the direct and positive effect of that conspiracy was to hurt and injure the interstate commerce of plaintiffs as that commerce has been defined in this circuit.

It allows that the permanent injunction prayed for by plaintiffs ought to be granted. Let a decree be drawn accordingly.

(Indorsed: "Filed Nov. 6 190 W. W. Nall, Clerk.")

APPENDIX B.

Majority Opinion of the U. S. Circuit Court of Appeals for the Eighth Circuit.

Sanborn, Circuit Judge.

This is an appeal by United Leather Workers' International Union, Local Lodge No. 66, an association of about 600 union workmen of St. Louis, Missouri, and about 25 individual members of that association, defendants below, from a final decree of the District Court which enjoined them from compelling or inducing any of the employes of the plaintiffs, corporations of Missouri, whose places of business were in St. Louis, by threat, intimidation, force, abusive, violent or insulting language, the threat of superior numbers or pickets, by assaulting, threateningly accosting, laying hands upon, by following them to their homes, or intimidating the members of their families, to leave the service of the plaintiffs or to fail or refuse to perform their duties to the latter as such employes.

The plaintiffs were five corporations of the State of Missouri, who for a long time had been and were on and prior to the 10th day of April, 1920, engaged in selling, on orders from their customers, the great majority of whom were residents and citizens of other states than Missouri and had their places of business therein, manufacturing and shipping to such customers at their places of business, trunks, leather goods, and bags, which by such orders the customers bought and directed the plaintiffs to make and ship to them.

(1) This suit was founded on Section 1 of the Sherman Anti-Trust Act, which reads:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal" (Comp. Stat., Sec. 8820, Act of July 2, 1890, 26 Stat. 209, c. 647, Sec. 1).

The complaint of the decree is that the evidence is insufficient to sustain it because, although it conclusively established the facts that the defendants conspired to and did by unlawful means, such as too many pickets, assaults, threats and intimidation of employes and those seeking employment of the plaintiffs, restrain and stop the theretofore continuous streams of the plaintiffs' interstate commerce, and prevent the plaintiffs' performance of their interstate commerce contracts of sale, they did this by preventing the plaintiffs from manufacturing the articles they had contracted to sell, make and deliver in interstate commerce, and because the defendants stopped the flow of this interstate commerce in this way for the purpose of compelling the plaintiffs to employ union men only and to comply with other demands of the defendants.

The ordinary course of business of parties selling, making, and shipping goods on orders of their customers is to furnish such customers with lists of the goods they offer to make and sell and the prices thereof, for the customers to send to the vendors written orders for the goods they wish to buy at those prices, the receipt and acceptance of which the

sellers acknowledge in writing. Thereupon such orders become legal and binding contracts on the part of the sellers to make and ship the articles to the customers at the places specified therein and on the part of the customers to receive and pay the specified prices for the goods (Rearick v. Pennsylvania, 203 U. S. 507, 511, 27 Sup. Ct. 159, 51 L. Ed. 295). The evidence was that when the defendants stopped the interstate commerce of the plaintiffs by stopping the making of the goods their customers had ordered the plaintiffs had such unfilled orders or contracts for the sale, manufacture and shipment to their customers at the latters' places of business in states other than Missouri of these respective values: Herkert & Meisel Trunk Company, $200,000; James A. Quirk & Co., $15,000; F. A. Kolb Trunk and Case Company, $5,000; the Stability Leather Goods Company, $32,000; P. C. Murphy Company, $75,000—aggregating $327,000. The Supreme Court has declared that—

> "Where the contract is for the sale of the article and for its delivery in another state, the transaction is one of interstate commerce, although the vendor may have also agreed to manufacture it in order to fulfill his contract of sale. In such case a combination of this character would be properly called a combination in restraint of interstate commerce, and not one relating only to manufacture" (Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 246, 20 Sup. Ct. 96, 109 [44 L. Ed. 136]).

Indeed, the established rule is that "interstate commerce," within the meaning of that term in the Constitution and the Anti-Trust Act, embraces far

more than the mere sale, exchange and interstate transportation of the goods. It includes intercourse; it comprehends every contract, trade and dealing between citizens of one state and those of another which contemplates the transportation of goods, persons or information from one state into another, and every initiatory, negotiating and intervening act of the parties to that trade or deal from the time the intercourse relating to it commences until the transportation and delivery have been completed (Butler Bros. Shoe Co. v. United States Rubber Co., 156 Fed 1, 17, 84 C. C. A. 167; International Textbook Co. v. Pigg, 217 U. S. 91, 107, 30 Sup. Ct. 481, 54 L. Ed. 678, 27 L. R. A. [n. s.] 493, 18 Ann. Cas. 1103; Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 42 Sup. Ct. 106-108, 66 L. Ed.....; United States v. Reading Co., 226 U. S. 324, 367, 368, 33 Sup. Ct. 90, 57 L. Ed. 243; Hopkins v. United States, 171 U. S. 578, 598, 19 Sup. Ct. 40, 43 L. Ed. 290; United States v. Swift & Co. [C. C.], 122 Fed. 529, 531; Welton v. State of Missouri, 91 U. S. 275, 23 L. Ed. 347; Caldwell v. North Carolina, 187 U. S. 622, 629, 23 Sup. Ct. 229, 47 L. Ed. 336; United States v. Tucker [D. C.], 188 Fed. 741, 742; Marienelli v. United Booking Offices of America [C. C.], 227 Fed. 165; In re Selman Heating & Plumbing Co. [D. C.], 204 Fed. 839, 840, 841-843; Robbins v. Shelby Taxing District, 120 U. S. 489, 497, 7 Sup. Ct. 592, 30 L. Ed. 694; Globe Elevator Co. v. Andrew [C. C. A.], 144 Fed. 881, 882).

(2) Under these authorities the contracts evidenced by the unfilled orders were contracts and transactions in interstate commerce. The acts of the customers in sending the orders were initiatory acts in contracts

in interstate commerce. The receipt and acknowledgment of the receipt of the orders, the manufacture of the goods pursuant thereto, the packing, loading, shipping of them were intermediate steps and parts of, and the delivery and payment for the goods were the final steps of contract and transactions in interstate commerce, and the direct restraint, and for a time the complete prevention and thereafter the particular prevention of the taking of these steps by the unlawful means used by the defendants proved by the evidence, whether that restraint was imposed upon the selling, the making, the packing, the loading, the shipping, or the transportation of the goods, was the very restraint denounced by the Anti-Trust Act and brought the subject-matter of, the parties to the suit, and the relief the court granted far within the jurisdiction of the federal court under the Anti-Trust Act. Thus, Mr. Justice Harlan, delivering the prevailing opinion in Northern Securities Co. v. United States, 193 U. S. 197, 329, 24 Sup. Ct. 436, 453, 48 L. Ed. 679, said:

> "In United States v. E. C. Knight Company (156 U. S. 1), it was held that the agreement or arrangement there involved had reference only to the manufacture or production of sugar by those engaged in the alleged combination, but if it had directly embraced interstate or international commerce, it would then have been covered by the Anti-Trust Act and would have been illegal."

And in Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 242, 20 Sup. Ct. 96, 107 (44 L. Ed. 136), the Supreme Court said:

> "When Congress has enacted a statute such as the one in question, any agreement or combina-

> tion which directly operates, not alone upon the manufacture, but upon the sale, transportation and delivery of an article of interstate commerce, by preventing or restricting its sale, etc., thereby regulates interstate commerce to that extent and to the same extent trenches upon the power of the national Legislature and violates the statute."

The execution of the combination or conspiracy of the defendants had exactly that effect. It directly operated and that operation was its patent and inevitable effect, not alone upon the manufacture, but upon the sale, transportation, and delivery of the articles the plaintiffs had contracted to sell, make and deliver in interstate commerce.

Moreover, the evidence establishes the facts that for years the plaintiffs had been and were, when the operation of the defendants' combination stopped them, continuously conducting vast currents or streams of interstate commerce in such articles as they contracted to sell, make, and deliver from the State of Missouri into other states where their customers received them. The evidence shows that the great body of the goods the plaintiff sold, made, and delivered were sold and shipped to customers in other states than Missouri; that two of the plaintiffs sold goods to the value of $2,950,000 per year; and that while the exact volume of the business of the other three does not appear, it is a fair inference from the proof that the five plaintiffs were pouring into the channels of interstate commerce goods of the value of at least $2,500,000 per annum. This course of business determined and demonstrated that the transac-

tions of these plaintiffs in causing and conducting these currents including the order contracts for the sale, making, transportation, and delivery of the goods in other states, the selling, the manufacture, the loading, shipping, and delivery of these goods at their destinations constituted interstate commerce (Stafford v. Wallace, 258 U. S. ..., 42 Sup. Ct. 401, 402, 403, 66 L. Ed. ...; Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 42 Sup. Ct. 106, 109, 66 L. Ed. ...; Lemke v. Farmers' Grain Co., 258 U. S. 50, 42 Sup. Ct. 244, 247, 66 L. Ed. ...; Swift & Co. v. United States, 196 U. S. 375, 25 Sup. Ct. 276, 49 L. Ed. 518; Eureka Pipe Line Co. v. Hallanan, 257 U. S. 265, 42 Sup. Ct. 101, 102, 103, 66 L. Ed. ...; United Fuel Gas Co. v. Hallanan, 257 U. S. 277, 42 Sup. Ct. 105, 106, 66 L. Ed. ...). "When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another state from that of the seller and of the cattle" (Swift & Co. v. United States, 196 U. S. 398, 399, 25 Sup. Ct. 276, 280 [49 L. Ed. 518]). And where customers in other states order goods to be made by sellers in Missouri and shipped to them in the other states, sellers accept such orders, agree to so sell, make, and ship the goods and do so, and this is a typical constantly recurring course of action, the cur-

rent thus existing is a current of commerce among the states and the manufacture of the goods pursuant to the contracts is as much a part of that interstate commerce as is the contract of sale or the loading, the shipment, or the delivery. "The application of the commerce clause of the Constitution in the Swift case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another, which are every flowing, are in their very essence the commerce among the states and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control" (Stafford v. Wallace, 258 U. S. ..., 42 Sup. Ct. 403, 66 L. Ed. ...).

(3) The rights of the plaintiffs to keep their business running, to the continuous flow of their currents of interstate commerce, were property rights which they were legally entitled to exercise (Quinlivan v. Dail-Overland Co. [C. C. A.], 274 Fed. 56, 66; Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461; King v. Weiss & Lesh Mfg. Co., 49 App. D. C. 377, 266 Fed. 257, 260).

(4, 5) Counsel argue that the defendants had no purpose to restrain the interstate commerce of these plaintiffs, that their only purpose was to force the plaintiffs to employ none but union men and to grant other demands which the defendants made, but one can hardly wink so fast as not to see that the real purpose of their prevention of the plaintiffs from manufacturing the articles they had contracted to

sell, make and deliver in interstate commerce, and their prevention of the flowing of the currents of these articles in interstate commerce was to deprive the plaintiffs of their income from the sales and deliveries of the goods, and by this continuing loss of income to compel the submission of the plaintiffs to their demands. Moreover, the natural and inevitable effect of the prevention by the defendants of the making by the plaintiffs of the articles they had made interstate contracts to sell, make and deliver was the prevention of their performance of their contracts and the prevention or partial prevention of their interstate commerce, and this result was so evident and unavoidable that the defendants could not have failed to know, to purpose, and to intend that this should be the result. "The conspirators must be held to have intended the necessary and direct consequences of their acts and cannot be heard to say the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result." United States v. Patten, 266 U. S. 525, 543, 33 Sup. Ct. 141, 145 (57 L. Ed. 333, 44 L. R. A. [n. s.] 352); Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 245, 256, 257, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461; Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 213, 20 Sup. Ct. 96, 44 L. Ed. 136; Duplex Co. v. Deering, 254 U. S. 443, 463, 467, 468, 41 Sup. Ct. 172, 65 L. Ed. 349, 16 A. L. R. 196. The defendants cannot be credited here with an innocent purpose or intent, and even if they could be they were guilty of

combining to use and of using unlawful means, assaults, threats, too many pickets, following employes to their homes, and like intimidating acts that scared the plaintiffs' employes to leave them and prevented those desiring employment from taking it. A combination or conspiracy to use unlawful means to accomplish a lawful purpose, and its execution by the use of such means, is as violative of the act as a conspiracy to accomplish an unlawful purpose by lawful means.

(6) It is contended that because manufacture is not commerce and is not interstate commerce, the restriction or prevention of the manufacture of articles which, by interstate commerce contracts and transactions, sellers have agreed to sell, make, transport to, and deliver in other states, and the prevention of existing interstate commerce in such articles in this way, is not remediable by federal courts under the Anti-Trust Act. It is true that manufacture alone is not interstate commerce. But it is equally true that when manufacture becomes an essential part of or an indispensable step in the execution of an interstate commerce contract or transaction, or in the continuously flowing current of interstate commerce, as such manufacture was and is in this case, it becomes a part of or step in that interstate commerce to such an extent that a federal court of equity is vested with the power and is subject to the duty to enjoin the execution of a combination or conspiracy to prevent or practically prevent the performance of such contracts or to prevent or drastically restrict such interstate commerce by preventing the manufacture which constitutes one of its indispensable intermediate steps or parts. While manufacture alone is not interstate

commerce, neither is buying or selling or contracting to buy or sell the goods or loading or packing or shipping the goods, when considered by itself alone, interstate commerce; yet each and all of these may become parts of and steps in interstate commerce, and when they so become, the restriction or prevention of these steps, which has the necessarily intended direct and inevitable effect of stopping or drastically restraining that interstate commerce by the execution of the conspiracy to restrain or destroy it, may be lawfully enjoined by a federal court.

In United Mine Workers of America et al. v. Coronado Coal Co. et al., 258 U. S. ..., 42 Sup. Ct. 570, at page 583, 66 L. Ed. ..., the Supreme Court, summing up the relation of coal mining to interstate commerce, said:

> "Coal mining is not interstate commerce and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce, unless the obstruction to mining is intended to restrain commerce in it, or has necessarily such a direct, material, and substantial effect to restrain it that the intent reasonably must be inferred."

The corollary conclusively follows that if the obstruction to coal mining is intended to restrict interstate commerce or necessarily has such a direct material and substantial effect to restrain it that the intent reasonably must be inferred, then such an obstruction to coal mining is an unlawful restraint to interstate commerce. So, while manufacture is not interstate commerce, its relation to interstate commerce is governed by the same rule. If the obstruc-

tion to it is intended directly to restrain interstate commerce, or if such obstruction necessarily has such a direct, material, and substantial effect to restrain it, that the intent so to do reasonably must be inferred, then such obstruction to manufacture is a direct restraint of interstate commerce remediable by the federal court under the Anti-Trust Act. The case in hand falls directly under this rule. The obstruction and prevention of the manufacture of the articles which the plaintiffs had made interstate commerce contracts to make, sell, and deliver, and to pour into their continuously existing currents of interstate commerce, could not have been made without the knowledge of the defendants that their direct, material, necessary, substantial, and inevitable effect would be to restrain or to prevent the plaintiffs' interstate commerce in such articles and thus to deprive them of their income; nor could it have been made without their reasonably inferred intent and purpose to obtain that result.

While the law governing cases of this class is the same in all cases, the conspiracies alleged, the evidence to sustain them, and the results in the various cases necesarily differ. In the case last cited, as that case was stated and treated by the Supreme Court, the gravamen of the charge of the conspiracy was to monopolize all interstate commerce in coal in the United States, and to prevent any interstate trade or commerce in the coal produced from nonunion mines. Thus the Court said:

> "The plaintiffs charge that there has been and is a continuously operating conspiracy between

union coal operators and the International Union to restrain interstate commerce in coal and to monopolize it."

And it held that the plaintiffs were not entitled to recover against district No. 21 because "in a national production of from 10,000,000 to 15,000,000 tons a week, or in a production in district No. 21 of 150,000 tons a week, 5,000 tons a week, which the Bache-Denman mines in most prosperous times could not exceed, would have no appreciable effect upon the price of coal or nonunion competition" (258 U. S. ..., 42 Sup. Ct. 570, 582, 584, 66 L. Ed. ...). And the Court defeated the plaintiffs in that case because their entire production of coal was so small in proportion to the entire production in the nation that the complete prevention of the plaintiffs' production could not have had any direct material effect on the alleged attempt to monopolize all the coal production of the nation. In the case before this court now the gravamen of the complaint is not that the defendants attempted to monopolize all interstate commerce, but that the defendants conspired and were executing that conspiracy by unlawful means to prevent if possible, and to restrain as far as possible the flow of the plaintiffs' existing continuous currents of interstate commerce and the performance of the interstate commerce contracts which they had made to sell, make and deliver the articles which were the subjects of that commerce to customers in states other than Missouri.

It was not essential to the right of the plaintiffs to relief by injunction by the court below that the object or effect of the defendants' conspiracy and its

execution should obstruct all interstate commerce or all interstate commerce in that class of articles with which the plaintiffs were conducting interstate commerce, or that it should increase the price of such articles throughout the country. It was sufficient that the defendants' conspiracy was with the necessarily inferred intent, and that, as unlawfully executed by them, it had the effect directly and substantially to interfere with, restrain and obstruct the large volume of interstate commerce which the plaintiffs were conducting to their irreparable injury. In the absence of the Anti-Trust Act, the plaintiffs had the right to conduct this interstate commerce. Congress has imposed no restraint upon it or them. The failure of Congress to impose any restriction on this commerce was in effect a declaration by that body that this interstate commerce should be free and untrammeled (Welton v. State of Missouri, 91 U. S. 275, 279, 282, 23 L. Ed. 347; Brown v. Houston, 114 U. S. 622, 631, 5 Sup. Ct. 1091, 29 L. Ed. 257; Walling v. Michigan, 116 U. S. 446, 455, 456, 6 Sup. Ct. 454, 29 L. Ed. 691).

Not satisfied that this declaration by inaction was sufficient, the Congress granted to the federal courts the power to protect the freedom of this interstate commerce by the Anti-Trust Act. That act provides that—

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal" (Comp. St., Sec. 8820).

In the succeeding section it denounces the monopolization of any part of trade or commerce among the

states. While monopolies of interstate commerce and of parts of that commerce thus fall under the ban of the act, it denounces with equal force, clearness, and particularity every combination and conspiracy which directly and unreasonably restrains, interferes with, or obstructs, although it does not monopolize, or tend to monopolize, interstate commerce or any class of it. Direct and substantial restraint, obstruction, or destruction of interstate commerce, or of substantial parts of it, pursuant to a conspiracy or combination, is as violative of the act as a monopoly thereof.

In the Debs Case, 158 U. S. 564, at page 581, 15 Sup. Ct. 900, at page 905 (39 L. Ed. 1092), Mr. Justice Brewer said:

> "It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this Court the question presented was of the validity of state legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a state to legislate in such a manner as to obstruct interstate commerce. If a state with its recognized powers of sovereignty is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that state has a power which the state itself does not possess?"

If the State of Missouri, by means of an act of its Legislature, had attempted to impose the restraint and obstruction upon interstate commerce which the defendants, through their conspiracy placed upon it in this case, the federal court, upon a proper applica-

tion, would without doubt have prevented the success of such an endeavor. That restraint and obstruction by the defendants clearly denounced as it is by the express terms of the Anti-Trust Act is much less justifiable than it would have been if imposed by the state.

Evidence of the interstate contracts, of the plaintiffs' currents of interstate commerce, of the unlawful acts of the defendants, of the times and manners of their commission, and of their direct and inevitable effect in preventing the performance of the plaintiffs' interstate commerce contracts, and in obstructing the currents of their interstate commerce, fully sustained the finding by the court below of the formation and existence of the conspiracy, of its execution by unlawful means, and of its inevitable effect, and well warranted the issue of the injunction.

In Gable v. Vonnegut Machinery Co. (C. C. A.) 274 Fed. 66, 71, 72, the complainant, the Vonnegut Machinery Company, was the agent of the defendant, the Toledo Machine & Tool Company, the manufacturing company, under a contract with the plaintiff to pay the latter 7½ per cent on the sale of the plaintiff's production in states other than that of the tool company. Complainant brought suit and obtained an injunction against the tool company and some of its striking employes on the ground that the latter had formed and were operating a combination to prevent and which did prevent the tool company from manufacturing its usual production, and thereby restrained its interstate commerce and deprived complainant of its commission under its contract. The Court held that the Vonnegut Company must be

aligned with the tool company and not against it. And that court finally held that—

> "The record before us is barren of evidence that the object of the strike was to interfere with interstate commerce. So far as appears, either directly or inferentially, the strikers' only object was to obstruct the operation of the tool company's plant" (274 Fed. at page 74).

On the other hand, in the case at bar the evidence convinces that the obstruction of the manufacture imposed by the defendants' combination and its execution by means of their unlawful acts necessarily had such a patent, inevitable, direct, and substantial effect in obstructing and preventing the plaintiffs' interstate commerce, that their intent to stop it, and if they could not stop it to restrain it as much as possible, must be reasonably inferred.

Counsel for the defendants cite Crescent Oil Co. v. State of Mississippi, 257 U. S. 129, 42 Sup. Ct. 42, 66 L. Ed. ..., which did not arise under the Anti-Trust Act, but involved the question whether a cotton gin operating in Mississippi and ginning cotton which the owner of the gin had bought and caused to be shipped to it from another state was an instrumentality of interstate commerce in such a sense as to withdraw it from the regulatory power of the state; Hammer v. Dagenhart, 247 U. S. 251, 268, 38 Sup. Ct. 529, 62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724, which involved the constitutionality of the act of Congress to regulate the transportation in interstate commerce of articles produced by child labor; Capital Dairy Co. v. Ohio, 183 U. S. 238, 22 Sup. Ct. 120, 46 L. Ed. 171, which questioned the constitutionality of

the legislation of Ohio relating to oleomargarine; Diamond Glue Co. v. United States Glue Co., 187 U. S. 611, 23 Sup. Ct. 206, 47 L. Ed. 328, wherein the constitutionality, as against contracts made before its passage, of an act of the State of Wisconsin requiring corporations incorporated elsewhere to file copies of their charters, to pay small fees, and to meet certain other requirements as a condition of doing business in that state, was involved, and other authorities less relevant including those adjudging the time when articles flowing in the currents of interstate commerce make their entrance and exit from it and determining the line of damarcation between the exclusive power of the United States under the commerce clause of the Constitution and the police and regulatory powers of the states. In the opinions in many of these cases cursory remarks may be found about the relation of manufacture to interstate commerce and to commerce, but they fall under the familiar rule that the authority of expressions and statements in the opinions of courts is always limited to the specific question which they were considering and deciding when they were used. Cohens v. Virginia, 6 Wheat., 264, 399, 5 L. Ed. 257; United States v. Wong Kim Ark, 169 U. S. 649, 679, 18 Sup. Ct. 456, 42 L. Ed. 890; Traer v. Fowler, 144 Fed. 810, 817, 75 C. C. A. 540.

On the other hand, the Supreme Court has repeatedly sustained suits in equity under the Anti-Trust Act to enjoin the operation of combinations to restrain or obstruct interstate commerce by restraining or obstructing manufacture that constituted a part of or a step in such commerce. Addyston Pipe & Steel Co. v. United States, 175 U. S. 212, 240, 241, 246, 20

Sup. Ct. 96, 44 L. Ed. 136; Montague & Co. v. Lowry, 193 U. S. 38, 45; American Column & Lumber Co. v. United States, 257 U. S. 377, 42 Sup. Ct. 114, 66 L. Ed..... In Pennsylvania Sugar Refining Co. v. American Sugar Refining Co., 166 Fed. 254, 256, 258, 259, 92 C. C. A. 318, the plaintiff corporation, which had been engaged in importing raw sugar into Pennsylvania, there manufacturing it into refined sugar, selling and shipping it to customers in other states and countries, had ceased to do business during the Spanish War. That corporation, after consideration, formed the intention of engaging in business of that character again. The defendant corporation, which was engaged in the same class of business, conspired with one Segal, who held a majority of the stock of the plaintiff, to prevent the latter from again commencing the business contemplated, by making a large loan to Segal, taking his stock and the authority to vote it as security for the payment of the loan, and by the exercise of this voting power prevented the plaintiff from again commencing its business of manufacturing and selling refined sugar in interstate commerce. The plaintiff's action was for treble damages under the seventh section of the Anti-Trust Act. U. S. Comp. Stat., Sec. 8829. The first defense was that the conspiracy charged related to manufacture and was consequently exempt from the prohibition of the Anti-Trust Act, and United States v. E. C. Knight, 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325, was cited. But the Circuit Court of Appeals of the Second Circuit held that the conspiracy was not violative of the act in the Knight case only because it did not directly restrain interstate commerce, but that the alleged

conspiracy in the Pennsylvania Refining Company's case to prevent the latter from manufacturing, selling and shipping refined sugar at all naturally, directly and inevitably restrained interstate commerce and entitled the plaintiff to relief under the Anti-Trust Act.

When the combination or conspiracy of the defendants in this case was formed and when its execution commenced, by the strike, by the withdrawal at one time of nearly all the plaintiffs' workmen, the quick picketing with too many pickets of their plants, and the complete stoppage of their manufacture for the time being, the plaintiffs had made unfilled interstate commerce contracts to sell, make and ship to their customers in other states goods of the value of more than $300,000. They had existing continuously flowing currents of interstate commerce from Missouri to other states in the nation which carried their goods of the value of more than $2,500,000 per annum. In the execution of their combination, by too many pickets, by intimidation by numbers, by threats, by following to their homes, and by other unlawful and violent acts, the defendants scared many of the plaintiffs' remaining employes into withdrawing from their employment, and deterred those who wished to work for the plaintiffs from taking employment to such an extent that until they were restrained by the preliminary order of the court below they prevented the making of the articles the plaintiffs had contracted to sell, make and deliver in interstate commerce and stopped the flow of the plaintiffs' currents thereof. And after the restraining order was issued they continued the execution of their conspiracy and their un-

lawful acts to such an extent that they continued to obstruct and restrain to a very large and damaging extent the amount of the plaintiffs' manufacturing and of their interstate commerce, so that but a small per cent of their normal currents of interstate commerce could flow. The necessary and inevitable effect of this prevention and restriction of the making of the articles the plaintiffs had contracted to make, sell and deliver was to prevent for a time and drastically restrain their interstate commerce. The defendants' purpose to prevent the plaintiffs' manufacture in order to compel them to employ none but union men and to grant other demands could not have been unaccompanied with their intent and purpose to prevent, if possible, and, if not, to restrict their interstate commerce and thus to stop or diminish their income, for only by such stoppage or diminution would the stoppage or restriction of manufacturing inflict the compelling injury they sought to impose. The defendants are estopped from denying the necessary direct inevitable effects of their acts. The prevention for a time and the subsequent restriction of the intermediate step of manufacturing the articles the plaintiffs had contracted to sell, make and deliver in interstate commerce necessarily had such a direct, material, substantial and inevitable effect to restrain the interstate commerce of the plaintiffs that the defendants' purpose and intent so to do must be reasonably inferred, both as a matter of fact and as a matter of law; as a matter of fact, because the evidence produces an abiding conviction that such was the intent and purpose of the defendants, and as a matter of law because they are estopped from deny-

ing that they had the intent and purpose to produce the direct, natural, necessary and inevitable consequences of their acts. The decree below must accordingly be, and it is,

Affirmed.

Reference is made to the opinion of this court in Silverstein v. Local No. 280 of the Journeymen Tailors' Union et al., 284 Fed. ..., which is filed herewith.

APPENDIX C.

Dissenting Opinion of Judge Stone.

Stone, Circuit Judge (dissenting).

This is an appeal by a labor organization, certain officials and members thereof from a final decree of injunction.

Appellants contest the jurisdiction of the Court as a federal court. There is no longer room to question the applicability of the Sherman Act, within the limits of the Clayton Act (38 Stat. 730), to labor organizations and strikes. But the Sherman Act relates solely to interstate commerce, and the contention made here is that this conspiracy has no legal connection with interstate commerce. The facts necessarily bearing on this jurisdictional question are as follows: Appellees are trunk manufacturers. A part of their products are shipped in interstate commerce. Appellants desired to unionize the plants of appellees. If peaceful means failed, they designed to call a strike and so picket the plants as to prevent their operating until the appellees would submit to unionizing the plants. In pursuance of this plan, strikes were called and picketing put in operation. The evidence substantially shows that this picketing was conducted in an unlawful manner. **No attempt was made to prevent appellees from shipping any manufactured products or from receiving any raw material. There was no boycott of appellees' products or customers, no interference with interstate transportation, no purpose to interfere with such com-**

merce. The conspiracy was confined to preventing manufacture. The purpose of the conspiracy was to accomplish unionization by preventing manufacture and in no way includes as an object preventing appellees, by boycott or otherwise, from purchasing, selling, sending, or receiving products or materials. The jurisdictional question turns, therefore, on the point of whether a conspiracy for the sole purpose of unionizing a manufacturing plant is a restraint of interstate commerce because some of the articles which are prevented from being made are intended for interstate commerce and would normally enter therein.

My associates deem this situation reveals a conspiracy to interfere with interstate commerce, within the meaning of the Sherman Act. The points they make in their able opinion are: (1) That the manufacture of articles contracted, intended, or normally going into interstate commerce, constitutes a part of interstate commerce; (2) that where the purpose of the conspiracy is to prevent the manufacture of such articles, the inevitable effect is to interfere with interstate commerce, therefore an intent to so interfere must be inferred and the conspirators be estopped from denying that such was the actual intent; (3) that the means of executing the conspiracy were unlawful. **I cannot concur in these views or the conclusion reached, because I think controlling decisions of the United States Supreme Court are to the contrary.**

As to the contention that because an article is contracted for, intended for, or normally enters into interstate commerce, the manufacture of it is a part of interstate commerce. This conclusion is based upon

the argument that if the manufacture is prevented, the article cannot enter interstate commerce, and therefore manufacture is an "intermediate step" in and an integral part of such commerce. **This is patently true as a result of logical reasoning,** but is it true when the problem before the Court is to define that **somewhat difficult line which separates the powers of the nation over interstate commerce from the powers of the states over intrastate commerce and internal police regulation?** Such a problem must be solved along "practical" as well as logical lines. As said in Diamond Glue Co. v. U. S. Glue Co., 187 U. S. 611, at page 616, 23 Sup. Ct. 206, at page 208 (47 L. Ed. 328):

> "In modern societies every part is related so organically to every other, that what affects any portion must be felt more or less by all the rest. Therefore, unless everything is to be forbidden and legislation is to come to a stop, it is not enough to show that, in the working of a statute, there is some tendency, logically discernible, to interfere with commerce or existing contracts. Practical lines have to be drawn and distinctions of degree must be made. See, further, Kidd v. Pearson, 128 U. S. 1, 21; Coe v. Errol, 116 U. S. 517, 525, 527; Tredway v. Riley, 32 Neb. 495."

If this were otherwise, as said in Hammer v. Dagenhart, 247 U. S. 251, at page 272, 38 Sup. Ct. 529, at page 531 (62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724), "all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the Constitution when they vested in Con-

gress the authority to regulate commerce among the states. Kidd v. Pearson, 128 U. S. 1, 21."

In both of the preceding quotations, citation is made of Kidd v. Pearson, 128 U. S. 1, 21, 9 Sup. Ct. 6, 32 L. Ed. 346. The reasoning contained in that citation, approved in these later cases, as set out on page 21 of 128 U. S., on page 10 of 9 Sup. Ct. (32 L. Ed. 346), is as follows:

> "If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the states, with the power to regulate, not only manufacture, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the states, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are, and must be, local in all the details of their successful management.
>
> "It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme,

when we regard the multitudinous affairs involved, and the almost infinite variety of their minute details.

"It was said by Chief Justice Marshall that it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the several states was to insure uniformity of regulation against conflicting and discriminating state legislation. (See, also, County of Mobile v. Kimball, supra, at page 697.)

"This being true, how can it further that object so to interpret the constitutional provision as to place upon Congress the obligation to exercise the supervisory powers just indicated? The demands of such a supervision would require, not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent. Any movement toward the establishment of rules of production in this vast country, with its many different climates and opportunities, could only be at the sacrifice of the peculiar advantages of a large part of the localities in it, if not of every one of them. On the other hand, any movement toward the local, detailed, and incongruous legislation required by such interpretation would be about the widest possible departure from the declared object of the clause in question. Nor this alone. Even in the exercise of the power contended for, Congress would be confined to the regulation, not of certain branches of industry, however numerous, but to those instances in each and every branch where the producer contemplated an interstate market. These instances would be almost infinite, as we have seen; but

still there would always remain the possibility, and often it would be the case, that the producer contemplated a domestic market. In that case the supervisory power must be executed by the state; and the interminable trouble would be presented, that whether the one power or the other should exercise the authority in question would be determined, not by any general or intelligible rule, but by the secret and changeable intention of the producer in each and every act of production. A situation more paralyzing to the state governments, and more provocative of conflicts between the General Government and the states, and less likely to have been what the framers of the Constitution intended, it would be difficult to imagine."

In applying this rule of practical logic to the question of whether or not manufacture of an article of interstate commerce is, as such, a part of interstate commerce, I find, as it seems to me, a long, unbroken line of decisions to the effect that it is not. These decisions, many in number, began in 1885 with Coe v. Errol, 116 U. S. 517, 6 Sup. Ct. 475, 29 L. Ed. 715, and came down to June, 1922, with the noted case of United Mine Workers of America v. Coronado Coal Co.

From these cases I will select a few quotations which, in my judgment, sustain the view that manufacture of articles to be shipped in interstate commerce is not a part of interstate commerce within the meaning of the Constitution, as construed by the Supreme Court. I am impelled to do so by my high regard for the ability and learning of the judges with whom I feel compelled to differ in this case. I shall endeavor, carefully, to choose, and italicize in part,

extracts which were not merely vagrant expressions of the Court but such as were made directly applicable to determination of the issues there involved.

In the United Mine Workers' case, supra (decided June 5, 1922), this Court was reversed for holding that mining coal was interstate commerce. The facts and issues in that case seem to me directly controlling here. There was a strike, the purpose of which was to unionize the mines in a certain locality. Here the strike was to unionize certain trunk factories, all of which were located in St. Louis, Missouri. Unlawful means were there, as here, used to carry on the strike; the only difference being that in that case such means went to the further extent of murder, riot and arson. In that case, Chief Justice Taft, for the Court, said:

> "Coal mining is not interstate commerce, and the power of Congress does not extend to its regulation as such. In Hammer v. Dagenhart, 247 U. S. 251, 272, we said: 'The making of goods and the mining of coal are not [interstate] commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof (Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. 439).' Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce."

In Lemke v. Farmers Grain Co. (decided February 27, 1922) the Court said:

> "Nor is this conclusion opposed by cases decided in this court and relied upon by appellants, in which we have had occasion to define the line

between state and federal authority under facts presented which required a definition of interstate commerce where the right of state taxation was involved, or **manufacture** or commerce of an intrastate character was the subject of consideration. In those cases we have defined the beginning of interstate commerce as that time when goods begin their interstate journey by delivery to a carrier or otherwise, thus passing beyond state authority into the domain of federal control. Cases of that type are not in conflict with principles recognized as controlling here."

In Crescent Cotton Oil Co. v. Mississippi (decided November 14, 1921) the Supreme Court considered the question of whether the Anti-Gin Act of Mississippi (Laws Miss. 1914, c. 162) interfered with interstate commerce. On that point the Court said:

"It is clear that these decisions cannot be of aid in determining the question we are now considering, which is whether a cotton gin operated by an oil company in Mississippi is rendered an instrumentality of interstate commerce by the fact that the owner of it ships out of the state, for its use in another state, all of the cotton seed which may be purchased in connection with its ginning operations. * * *

"The separation of the seed from the fiber of the cotton, which is accomplished by the use of the cotton gin, is a short, but important, step in the manufacture of both the seed and the fiber into useful articles of commerce, **but that manufacture is not commerce** was held in Kidd v. Pearson, 128 U. S. 1, 20, 21; United States v. E. C. Knight, 159 U. S. 1, 12, 13; Capital City Dairy Company v. Ohio ex rel. Attorney-Gen-

eral, 183 U. S. 238, 245; McCluskey v. Marysville & Northern Railway Company, 243 U. S. 36, 38, and in Hammer v. Dagenhart, 247 U. S. 251, 252; Arkadelphia Milling Company v. St. Louis & Southwestern Railway Company, 249 U. S. 134, 151, 152. **And the fact, of itself, that an article when in the process of manufacture is intended for export to another state does not render it an article of interstate commerce** (Coe v. Errol, supra, and New York Central etc. Company v. Mohney, 252 U. S. 152, 155). When the ginning is completed the operator of the gin is free to purchase the seed or not, and, if it is purchased, to store it in Mississippi indefinitely, or to sell or use it in that state, or to ship it out of the state for use in another, and, under the cases cited, **it is only in this last case, and after the seed has been committed to a carrier for interstate transport, that it passes from the regulatory power of the state into interstate commerce and under the national power.**

"The application of these conclusions of law to the manufacturing operations of the cotton gins, which we have seen precede, **but are not a part of, interstate commerce**, renders it quite impossible to consider them an instrumentality of such commerce, which is burdened by the Anti-Gin Act, and the first contention of the plaintiff in error must be denied."

In Hammer v. Dagenhart, 247 U. S. 251, at page 272, 38 Sup. Ct. 529, at page 531 (62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724), the Court said:

"When offered for shipment, and before transportation begins, the labor of their production is over, and the mere fact that they were in-

tended for interstate commerce transportation does not make their production subject to federal control under the commerce power.

"Commerce 'consists of intercourse and traffic * * * and includes the transportation of persons and property, as well as the purchase, sale and exchange of commodities.' **The making of goods and the mining of coal are not commerce,** nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof (Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. 439).

"Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but **the production of articles intended for interstate commerce is a matter of local regulation.**

"'When the commerce begins is determined not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another state' (Mr. Justice Jackson in Re Green, 52 Fed. Rep. 113). This principle has been recognized often in this court (Coe v. Errol, 116 U. S. 517; Bacon v. Illinois, 227 U. S. 504, and cases cited). If it were otherwise, all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the states (Kidd v. Pearson, 128 U. S. 1, 21)."

In Kidd v. Pearson, 128 U. S. 1, at page 20, 9 Sup. Ct. 6, at page 10 (32 L. Ed. 346), the Court said:

> "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this Court in County of Mobile v. Kimball, 102 U. S. 691, 702, is as follows: 'Commerce with foreign countries, and among the states, strictly considered, consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities.' If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the states, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate and harvest his crop with

an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress and denied to the states, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform and vital interests—interests which in their nature are and must be local in all the details of their successful management.

"It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme, when we regard the multitudinous affairs involved, and the almost infinite variety of their minute details."

In Capital City Dairy Co. v. Ohio, 183 U. S. 238, at page 245, 22 Sup. Ct. 120, at page 123 (46 L. Ed. 171), the Court said:

"The contention that the statutes in question are repugnant to the commerce clause of the Constitution is manifestly without merit. All the acts of the corporations which were complained of related to oleomargarine **manufactured by it in the State** of Ohio, in violation of the laws of that state, and therefore operated on the corporation within the state and affected the product manufactured by it **before it had become a subject of interstate commerce** (Kidd v. Pearson, 128 U. S. 1; United States v. E. C. Knight Co., 156 U. S. 1). It results that the plaintiff in error is not in a position to assail the validity of the statutes, because of their supposed operation upon interstate commerce, and we are not called upon to express an opinion respecting the constitutionality of the statutes upon this assumption."

The cases from which the above notations are taken, as well as the many other similar decisions

cited in those cases, establish the doctrine that the manufacture of goods which are to be later transported in interstate commerce is not a part of interstate commerce.

As to the second point in the majority opinion, to wit, the intent to interfere with interstate commerce: It is undoubtedly the law that a conspiracy formed with the specific intent to interfere with (usually by restriction of) interstate commerce is within the domain of national control and subject to the Sherman Act. This is true irrespective of the means employed toward its execution. Because this is so, there are cases in which the act has been held applicable where the means happened to be control of or prevention of production of the particular article of interstate commerce. Such are American Column & Lumber Co. v. U. S., 257 U. S. 377, 42 Sup. Ct. 114, 66 L. Ed. (decided December 19, 1921); U. S. v. Reading Co., 226 U. S. 324, 33 Sup. Ct. 90, 57 L. Ed. 243. But, in that character of cases, it was not the means employed to effectuate the conspiracy that brought it within the federal control. It was the specific, actually existing unlawful intent and purpose of the conspiracy which had that effect.

This record is entirely barren even of a suggestion that there existed here any actual intent to affect interstate commerce. The sole purpose of this strike was to benefit and strengthen the labor unions here involved by unionizing these particular plants. Of course, this was intended to be accomplished by curtailing and, if possible, preventing complainants from manufacturing their products. This was to be

brought about by preventing them procuring the necessary labor except through employment of members of the union. But **there was no specific purpose or intent to affect interstate commerce such as was alleged, for example, in the United Mine Workers' Case, supra. Nor is there a word of testimony tending to show that the respondents had any knowledge of or cared anything about whether the business of complainants was state or interstate in character.** That consideration was unimportant to their purposes. Therefore, if an intent to interfere with interstate commerce is to be found, it must be imputed, as matter of law, not fact, from the circumstances that to prevent this manufacture would naturally and inevitably prevent the products thereof going into interstate commerce.

It is generally true that men who do acts are presumed to intend the natural consequences thereof. But here again this logic and rule must be applied in a practical way. If it is not so applied the entire police power of the states is in danger of absorption by the national government. This is true because, in our complex social and economic life, production, as well as manufacture, of all kinds of things is generally followed by entrance of those articles, or some of them, into interstate commerce. This necessity for having always in mind constitutional limitations in applying such rules of logic and law has been repeatedly recognized and laid down by the Supreme Court. The applied rule is that state laws or individual acts which affect interstate commerce incidentally are to be distinguished from those which

affect it directly. The former are without, the latter are within, national control.

United Mine Workers v. Coronado Coal Co., supra;
U. S. v. Patten, 266 U. S. 525, 33 Sup. Ct. 141, 57 L. Ed. 333, 44 L. R. A. (n. s.) 325;
Ware & Leland v. Mobile County, 209 U. S. 405, 28 Sup. Ct. 526, 52 L. Ed. 855, 14 Ann. Cas. 1031;
Hooper v. California, 155 U. S. 648, 15 Sup. Ct. 207, 39 L. Ed. 297;
Leloup v. Mobile, 127 U. S. 640, 8 Sup. Ct. 1380, 32 L. Ed. 311—
And many other cases.

Whether an act, a course of conduct or a state statute affects interstate commerce incidentally or directly, within the above rule, depends upon the circumstances of each particular case. It is not shown, in this evidence, that the volume of interstate business of these complainants was such as to affect prices, in interstate commerce, of such goods, if these factories ceased their output. It is shown that they manufactured several million dollars' worth of goods annually and that much of this went into interstate commerce. But we are not, in any way, advised what percentage or proportion this business bore to the entire volume of interstate business in such goods. I do not think we are authorized, with no evidence whatsoever, to say that interstate business, as a whole, in this kind of products would be affected by this strike, and thus attempt to sustain our jurisdiction by bringing this case within the rule of application as laid down in U. S. v. Patten,

226 U. S. 525, 33 Sup. Ct. 141, 57 L. Ed. 333, 44 L. R. A. (n. s.) 325, and similar cases.

To my mind, the facts of this case are much stronger than the United Mine Workers' Case, supra, and there the Supreme Court found no jurisdiction, although it said:

> "The circumstances are such as to awaken regret that, in our view of the general jurisdiction, we cannot affirm the judgment."

The consequences of a legal rule are often useful in testing its accuracy. **There can be no shadow of doubt as to the consequences of the rule laid down in the majority opinion. The natural, logical and inevitable result will be that every strike in any industry or even in any single factory will be within the Sherman Act and subject to federal jurisdiction provided any appreciable amount of its product enters into interstate commerce.** Moreover, if this true as to the products produced in such industry or factory, it is entirely logical the same rule should apply to the raw materials used in such production if any of them are subjects of interstate commerce. In a practical sense, this would result in all strikes being subject to federal jurisdiction, because scarcely any factory is so small that some of its finished products do not enter into interstate commerce. **And yet the Supreme Court has, within the six months, held that a strike in a mine shipping seventy-five per centum of its coal in interstate commerce and involving many miners and much property was without the federal jurisdiction** (United Mine Workers' Case, supra), and that Court has never departed from, but has repeatedly and recently affirmed, the

doctrine, announced almost forty years ago, that manufacturing of interstate products is not interstate commerce.

As to the third basis of the majority opinion—that the means employed to execute this conspiracy were unlawful: Such means included intimidation and violence. The unlawful character of intimidation and violence is beyond question, but that has nothing to do with the question of whether punishment therefor or prevention thereof should be in the state or in the federal courts. In the United Mine Workers case, supra, the means employed were far more vicious than here, including arson, riot and murder. Yet it was not even suggested, in that bitterly contested case, that the means employed by the strikers had anything whatever to do with the jurisdiction of the court.

For the above reasons, I find myself unable to concur in the result or reasoning of my able associates, and therefore dissent therefrom. I am further sustained by the case of Gable v. Vonnegut Machinery Co., 274 Fed. 66, recently decided by the Court of Appeals for the Sixth Circuit. In that case, by far the greater part of the products manufactured, in the plants affected, went into interstate commerce and contracts were in existence for much of such future product. In discussing the scope of the Sherman and Clayton Acts that Court said (page 73):

> "Neither of these statutes furnishes a remedy against acts merely because they incidentally and indirectly affect interstate commerce; they apply only to acts which directly and imme-

diately relate thereto. Manufacturing is not commerce. None of the cases cited support the theory that a manufacturer may invoke the jurisdiction of the federal court merely because a strike interferes with the manufacture of his products which are sold generally in interstate commerce."

The Court further said (page 74):

"The record before us is barren of evidence that the object of the strike was to interfere with interstate commerce. So far as appears, either directly or inferentially, the strikers' only object was to obstruct the operation of the tool company's plant. The fact that shipment was interfered with, only because goods were not manufactured, merely incidentally and indirectly affected interstate commerce."

APPENDIX D.

Brief in Support of Petition for Rehearing.

Notwithstanding the carefully reasoned and able opinion of the majority of this Court in this case, we are still profoundly convinced that articles in process of manufacture or manufactured within the state, even though part or the greater part of these articles were contracted to be shipped in interstate commerce, can, in the light of the numerous decisions of the Supreme Court of the United States to the contrary, be held to form a part of interstate commerce so as to give to the federal courts jurisdiction, exclusive or otherwise, to determine controversies regarding such articles between citizens and corporations of the same state.

If an interference with interstate commerce can be legally inferred from any act whatever, where such act has the effect to create such interference indirectly, then we submit that it will not to any appreciable extent tax the ingenuity of persons seeking the interpositnon of the federal courts to the exclusion of the courts of the state to lay the basis for such jurisdiction by the mere assertion or averment in their petitions and the proof in the support of same that they are unable to fill their interstate commerce contracts because the parties on whom they sought to fasten the responsibility either did or neglected to do some act which had the effect of preventing the former from fulfilling such contracts.

Thus, if A be a manufacturer in Missouri and B a resident of the same state, owes him a considerable

amount of money, and A needs that money to purchase materials or pay the help engaged in the production of articles intended or contracted to be shipped in interstate commerce, then upon a mere allegation that B, by refusing to pay him the money which he owes, has prevented him from fulfilling his contract to manufacture and ship the articles to customers outside of the state, A can (it seems to us), in the light of the opinion of this Court, assert an exclusive jurisdiction in the federal court of his claim against B for the money due.

And thus in a mere, simple contract of purely local concern and plainly detached from interstate commerce it is made possible in the enforcing of same for the party entitled to the benefit of the contract to seek his remedy in the federal court and to divest the state courts of the jurisdiction which properly belongs to them.

No matter how plausible the argument, or how well and closely reasoned the logic which leads to a condition of this sort, the condition itself is so plainly and violently at variance with the limitations imposed upon federal authority by the states, and so sweeping an encroachment upon the sovereignty and independence of the states themselves as to lead to the inevitable conclusion that the commerce clause of the United States is the death-trap of all state rights, and the whole scheme of our government system, epitomized in the declaration of an "indestructible Union composed of indestructible states" has been undermined and the authority of the states as independent sovereignties has passed to the centralized power, with all the disastrous effects which his-

tory teaches naturally and inevitably flow from centralization.

In the famous case of Texas v. White, 74 U. S. Reports 100 at 725 (7 Wall. 725), within short compass Chief Justice Chase has pointed out with a lucidity and directness that needs no elaboration the distinction between the rights of the federal government and the rights of the states under the Constitution of the United States in the following language:

> "Under the articles of Confederation each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right not expressly delegated to the United States under the Constitution are reserved to the states, respectively, or to its people, and it may be not unreasonably said that the preservation of the states and the maintenance of their government are as much within the design and care of the Constitution as the preservation of the union and the maintenance of the national government.
>
> "The Constitution in all its provisions looks to an indestructible union composed of indestructible states."
>
> County of Lane v. State of Oregon, 74 U. S. Reports, page 76,

and we can't help thinking that the principle of constitutional law above declared is securely embalmed in the decision of the majority of the members of this Court in the instant case.

To this we take leave to add that, in our humble judgment, the liberal interpretations given to the

commerce clause in the early decisions of the Supreme Court of the United States were aimed at construing the Constitution as allowing to the national legislature that discretion with respect to the means by which the powers it confers are to be called into execution which would enable that body to perform the high duties assigned to it in the manner most beneficial to the people (McCulloch v. the State of Maryland, 4 Wheat. 316), but, as stated in Martin v. Hunters Lessee, limited this interpretation so as to preserve intact the powers that properly belong to the state in the following language:

> "The Government of the United States can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given or given by necessary implication."

Continuously flowing currents of interstate commerce may be in the descriptive sense a picturesque and beautiful metaphor, but as applied purely to the interruption of or interference with process of manufacture it cannot logically become the basis of any rule attempting to define the point where state control ends and interstate control begins. Upon the contrary, it will, in our judgment, lead to a confusion which will make it impossible to preserve the distinction, for confusion will always follow where any other basis of distinction is made in relation to state and federal control of goods than the rule supported by the great weight of authority and never departed from, at least, by the Supreme Court of the United States, and which removes every species of perplexity from the solution of this question, and that rule as an-

nounced in Kidd v. Pearson, 128 U. S. Reports 120, 121; United States v. Knight, 156 U. S. 112, 113; Lenke v. Farmers Grain Company (decided February 27th, 1922), and the other authorities cited in the appellants brief is:

> "Goods become the subject of interstate commerce when they begin their interstate journey by a delivery to a carrier or otherwise by passing beyond state authority into the domain of federal control."

His Honor, Judge Stone, in his dissenting opinion in this case, stated that he could not concur in the views or conclusions reached by his associates because he thought controlling decisions of the Supreme Court are to the contrary. In this we humbly submit that he was right. Outside of the mere personal gratification of the advocate who finds his contentions upheld, we yield our respectful tribute of admiration to an effort worthy of the finest traditions of federal jurisprudence in the upholding of a great fundamental principle of our Government, which if once abandoned will leave but a debris of what once was a great nation composed of free and independent states.

Impressed with the gravity of this decision as bearing upon the question of the relations between federal and state governments, the distinguished jurist has not only pointed out the disastrous effect which will inevitably flow from federal control of state jurisdiction, but has, in our humble judgment, irrefutably demonstrated the absolute lack of proof in this case that the object of the strike was to interfere with interstate commerce. In his opinion, we think we are upheld upon the proposition that the proof of a con-

spiracy, its intent and purpose must be established either directly or by facts which indubitably point to its existence, and that it can never be inferred from the effect alone.

We, therefore, shall not be guilty of the impertinence of attempting to enlarge upon the matters and questions which he has so ably discussed, but rest our argument upon his opinion as the most logical and convincing reasons for the granting of this petition.

As counsel for the appellants of the above cause and in such capacity charged with the responsibility of its conduct in the trial court and in this court, we respectfully disclaim having made the argument in any of these courts attributed to us on page 6 of the majority opinion, either in brief or orally, viz., "that the only purpose of the defendants was to force the plaintiffs to employ none but union men"; upon the contrary, we pointed out in brief with all the emphasis that we could command (see page 83, printed record) "that not only was there no proof offered in the evidence of the existence of a conspiracy on the part of the defendants to bring about the 'closed shop' policy in the factories of the plaintiffs," but counsel for the plaintiffs objected to any evidence being given on the part of these defendants as to cause which led up to the strike (see page 167 of printed record), which objection was sustained by the trial judge as the basis of this ruling declared the defendants had the right to strike. (See page 84 of printed record.)

We also respectfully submit that the statement appearing in the majority opinion, page 15, as a conclu-

sion of fact "that the defendants' purpose to prevent the plaintiffs' manufacture in order to compel them to employ none but union men and to grant other demands" could not have been accompanied with their intent and purpose to prevent, if possible, and if not, to restrict their interstate commerce, was not based upon any evidence appearing in the record, as an examination of the pages to which we have just referred will show, nor do we think that the existence of such a purpose can even be logically held within the limits of the extended application of the doctrine of intent as defined in the majority opinion.

It is true that the bill of complaint of the plaintiffs charged the existence of a conspiracy on the part of the defendants for the avowed object of forcing the plaintiffs to adopt the "closed shop" policy, but it is equally true that not only did the plaintiffs fail to make any proof of the existence of a conspiracy for such a purpose, but strenuously objected to the defendants' attempt to show that no such purpose existed, and to this we will add that such purpose could not have existed, for the plaintiffs prior to the strike were maintaining closed shops.

We respectfully call the attention of the Court to the fact that the proof of three essential elements of a conspiracy is missing in the present case. These are:

(a) The confederating—the combining together of two or more persons.

(b) The intent—for the purpose.

(c) The object—of doing something unlawful or oppressive or immoral as a means to an end.

Eddy on Combinations, Vol. I, Sec. 265, p. 238.

There was no proof of any conspiracy on the part of the defendants; there was especially no proof of the purpose as stated in the petition on the part of the defendants to bring about the "closed shop" policy, and there was no proof of the objects of such a conspiracy, for that, too, was to bring about the closed shop policy, as alleged.

> "The intent is a vitally essential element. There can be no conspiracy without a purpose expressed or implied to do something unlawful, oppressive or immoral as a means to an end, and before parties can be convicted of a conspiracy the elements of wrongful intent must be as fully proven as the element of confederating."
>
> Eddy on Combinations, Vol. I, Sec. 369.
>
> "Whether the proof be direct or circumstantial, it must show what was the purpose of the combination."
>
> Eddy on Combinations, Vol. I, Section 369, page 241.

It is but natural that the trend of the judicial mind should lean strongly against an interference with a control of their business by the owners of same. The great economic questions which underlie the relations of capital and labor are forgotten and the strictest and sometimes the harshest limitations are placed upon the rights of labor to organize and to protect its interest, and this probably is responsible for a laxity in the application of the rules of evidence which finds no precedents in other cases.

The appellants strongly objected at the trial of this cause to the introduction of testimony in support of

the allegation of a conspiracy of persons not shown to be affiliated with their organizations, and whose names or identity were not even disclosed. The record teems with this sort of evidence. The impossibility of making a defense to this class of testimony is the most eloquent testimony to its unfairness.

> "It is fundamental that no evidence ought in strictness to be given by strangers to the record in order to affect the defendants until the fact of a conspiracy with them is shown."
>
> Greenleaf on Evidence, Vol. I, Section 92.

Most of the evidence offered on the part of the plaintiffs against these defendants was that of entire strangers to the record, many of whom were not named, and although the trial court ruled that this evidence should be connected up and that the defendants should be connected with it, yet such testimony in large part forms the basis of the majority opinion of this Court, that the defendants were guilty of the acts charged against them.

We understand that very recently, in the opinion not yet published, the Circuit Court of Appeals for the Seventh District has held in the case of Danville Local Union 115 of the United Brick and Clay Workers v. Granville Brick Company, where a similar state of facts as in the instant case existed, that interference with the manufacture of goods, although intended for interstate shipment, did not give the federal courts jurisdiction in an injunction proceeding.

We respectfully submit that a rehearing of this appeal should be granted.

JOHN P. LEAHY,
LENA FRANK,
Solicitors for Appellants.

I, John P. Leahy, hereby certify that I am the solicitor and of counsel for the above-named appellants and petitioners; that I personally attended the taking of all the testimony in the above-entitled cause; that I have carefully examined the record, opinion and briefs therein; that I am duly authorized by the appellants to execute and present the foregoing petition for rehearing; that I prepared said petition and believe the statements therein made to be true; that I believe this Court erred in its decision as specified in the foregoing petition and that appellants have a just and meritorious cause for rehearing.

Dated this 9th day of December, 1922.

John P. Leahy,
Solicitor and of Counsel for the
Appellant Petitioners.

Subscribed and sworn to before me this 9th day of December, 1922.

My term expires February 22, 1926.

Harriet Cox,
(Seal) Notary Public.